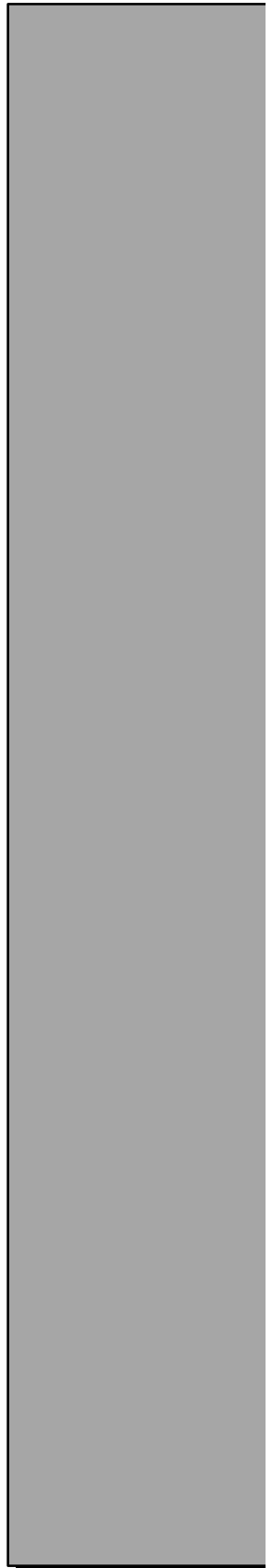


INSERT TAB 400

*COMPLIANCE LAWS  
AND REGULATIONS*



---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Bank Secrecy Act

### Section 400

---

#### Introduction

The Financial Recordkeeping and Currency and Foreign Transactions Reporting Act (Bank Secrecy Act or BSA), passed by Congress in 1970, requires that financial institutions file certain currency and monetary instrument reports and maintain certain records for possible use in criminal, tax, and regulatory proceedings. Failure to comply with the BSA can result in criminal or civil penalties.

The purpose of the BSA is to prevent financial institutions from being used as intermediaries for the transfer or deposit of money derived from criminal activity. Consequently, the BSA provides a paper trail of the activities of money launderers serving the interests of drug traffickers and other elements of white collar and organized crime. These activities generate large amounts of currency, often in small bills. During the course of these activities, the cash may be exchanged for larger denominations or converted to other monetary instruments for ease of use. The BSA has been amended through the years to strengthen its anti-money laundering purposes.

The Money Laundering Control Act of 1986, part of the Anti-Drug Abuse Act of 1986, strengthened the BSA by making money laundering a Federal offense. Specifically, it is a Federal crime under that Act to engage knowingly in any “financial transaction” involving proceeds derived from specified crimes if the purpose of the transaction is to: (1) promote the specified unlawful activity; (2) conceal or disguise the source, ownership, location or nature of the proceeds; or (3) evade a State or Federal transaction reporting requirement (structuring). These “financial transactions” include the movement of funds, use of one or more monetary instruments, or the use of a financial institution engaged in interstate commerce. The Act also criminalized any actual or attempted “monetary transaction” involving criminally derived property when: (1) over \$10,000 is involved; (2) a financial institution is used; (3) the property is derived from a specified crime; and (4) the transaction is conducted with the knowledge that the proceeds are criminally derived. “Monetary transaction” includes a deposit, withdrawal, transfer or exchange of funds or monetary instruments by, through or to a financial institution.

The Annunzio-Wylie Anti-Money Laundering Act, part of The Housing and Community Development Act of 1992, extended the prohibition against structuring transactions to cover international monetary instruments and increased the penalties for institutions and their employees who violate the BSA. For example, the Federal banking agencies were given the authority to revoke an institution’s charter if it is convicted of money laundering and to issue removal and prohibition orders against individuals charged with BSA offenses, unless the offense was inadvertent. The Act also increased the ceiling for assessing civil money penalties for negligent violations of the BSA to \$50,000. State-chartered institutions convicted of money laundering and BSA violations can have their deposit insurance terminated. To encourage the flow of information to the Treasury Department, the Act provided financial institutions with a “safe harbor” from civil liability under federal or state law for reporting any possible violation of law or regulation by customers. The Act also authorized the Treasury Department to issue regulations on wire transfer recordkeeping. In response, the Treasury Department and Federal Reserve Board issued a final rule, effective May 28, 1996, that requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions.

The Money Laundering Suppression Act of 1994, part of the Riegle Community Development and Regulatory Improvement Act of 1994, required the Federal banking agencies to develop enhanced examination procedures and to increase training to improve the identification of money laundering schemes in financial institutions. The Act also reduced regulatory burden by simplifying the process through which certain transactions can be exempt from reporting requirements, by reducing currency transaction reporting and by enacting other provisions to streamline the implementation of the BSA.

The BSA delegated to the Secretary of the Treasury authority for issuing regulations. Those regulations are found at 31 CFR Part 103 (Part 103). The Federal banking agencies are responsible for determining compliance by financial institutions with the BSA and implementing regulations.

Pursuant to the 1994 Act, the Federal banking agencies adopted a core set of examination procedures to determine whether an institution has the necessary system of internal controls, policies, procedures, and auditing standards to assure compliance with the BSA and implementing regulations. The procedures also require the examiner to review an institution's internal audit function, procedures, selected workpapers, records, reports, and responses. Based on the results, the examiner may conclude the review or continue with expanded procedures, which may include reviewing a sample of transactions and related documentation.

By ensuring that the institution has established policies, procedures, and practices to detect and report large cash transactions, the examiner can help deter the institution's use for money laundering. Further, the paper trail left by the institution's compliance with the recordkeeping and reporting requirements can aid in investigations of criminal activities.

### **Internal Compliance Program**

#### Office of Thrift Supervision Requirements

Office of Thrift Supervision regulations (12 CFR 563.177) require associations to establish and maintain a program to assure and monitor compliance with the requirements of the BSA and implementing Treasury regulations. The details of these requirements, such as reporting and recordkeeping, are discussed in following subsections. In brief, the program developed by an association must:

- Provide for the continued administration of the association's policies and procedures;
- Be reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of 31 C.F.R. Part 103;
- Be reduced to writing; and
- Be approved by the board of directors and reflected in the minutes of the association.

The BSA compliance program should, at a minimum, provide for:

- A system of internal controls;

- Independent testing of compliance;
- An individual(s) to coordinate and monitor the program; and
- Training of appropriate personnel.

Operating programs and procedures established for the reporting requirements should set forth the regulatory requirements and establish compliance guidelines with respect to large cash transactions and exemptions granted to customers.

The institution should establish a record retention schedule that includes the regulatory requirements for:

- Record retention;
- Maintaining lists of exempt retail customers;
- Maintaining records for cash sales of monetary instruments between \$3,000 and \$10,000 (inclusive); and
- Customers from whom taxpayer identification numbers have not been obtained.

#### Internal Audit Function

The institution's internal audit procedures should cover:

- Reporting. Coverage of the reporting requirements should include a review of actual tellers' work and copies of filed Forms 4789 and 4790.
- Recordkeeping. Coverage of the institution's recordkeeping activities should include testing adherence to the in-house record retention schedule. This schedule should meet the requirements of the regulations.
- Exemptions. Coverage should include audit steps necessary to ascertain whether the institution is maintaining the required list of customers exempt from filing reports. The audit procedure should test the reasonableness of the exemptions granted, and verify that the list is periodically updated.
- Foreign Accounts. Coverage should require the auditor to ascertain whether the institution has

filed Form TD F 90-22.1, declaring interest in a foreign financial account, if such an account exists.

- Staff training, including attendance.
- Correction of previously deficiencies noted in audit, examination or other reports or reviews.

#### Employee Education and Training

Tellers, new accounts personnel and others handling cash should be apprised of the reporting requirements for large cash transactions.

Operations personnel should be apprised of current regulatory requirements.

The institution's management, internal auditors, tellers, new accounts staff, branch managers and personnel in cash vault operations, should be interviewed to ascertain whether they are sufficiently knowledgeable concerning the reporting and record-keeping requirements and internal operating procedures. This phase of the examination should be conducted at those offices that conduct relatively large volumes of cash business.

Personnel who have contact with customers or handle currency transactions in other departments, such as the trust, loan, international or private banking department, or the institution's subsidiaries, should also be knowledgeable of the regulations and operating procedures.

An effective education and training program is one where management periodically reinforces the importance of compliance, one that is ongoing, and one that incorporates current developments. An ongoing and updated program enables management and staff to keep abreast of regulatory changes or new money laundering schemes. The program should cover new and existing staff.

#### **Money Laundering**

Simply stated, money laundering is the intentional movement of cash through various financial institutions and/or businesses in an attempt to disguise the true source or ownership of the funds, disguise the ultimate disposition of the funds, and eliminate audit trails needed for criminal tax and fraud investi-

gations. The "legal" definition is contained in 18 U.S.C. §§ 1956 and 1957: a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means, or involving one or more monetary instruments, or involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

Money laundering generally involves three independent steps, although these steps often occur simultaneously. First, placement, which is the process of placing, through deposits, wire transfers, or other means, unlawful cash proceeds into traditional financial institutions. Second, layering, which is the process of separating the proceeds of criminal activity from their origin through the use of layers of complex financial transactions. These transactions include converting cash into traveler's checks, money orders, letters of credit, stocks, and bonds, or purchasing valuable assets such as art or jewelry. Third, integration, which is the process of using an apparently legitimate transaction to disguise the illicit proceeds allowing the laundered funds to be disbursed back to the criminal. Different types of financial transactions, such as sham loans or false import/export invoices, are used.

Certain types of businesses, transactions, or geographic locations may lend themselves more readily to potential criminal activity than others. Nonetheless, attempts to launder money through a legitimate financial institution can come from many varied sources. Following are examples of potential sources of money laundering in businesses, banking functions and geographies.

*Businesses:*

- Nontraditional financial entities, including currency exchange houses, money transmitters and check cashing facilities
- Casinos
- Off-shore corporations and financial institutions located in tax or secrecy havens
- Leather-goods stores
- Car, boat, and plane dealerships
- Used automobile or truck dealers and machine parts manufacturers
- Travel agencies
- Brokers and dealers
- Jewel, gem, and precious metal dealers
- Import/export companies
- Cash-intensive businesses (e.g., restaurants, retail stores, parking garages)
- Telemarketers

*Banking functions and transactions:*

- Private banking
- Off-shore international activity
- Deposit-taking facilities
- Wire transfers or cash management functions
- Transactions in which the primary beneficiary or counterparty is undisclosed
- Loan guarantee schemes
- Traveler's checks
- Official bank checks
- Money orders
- Other electronic products that permit the rapid movement of currency (e.g., foreign exchange transactions followed by payment into another jurisdiction)

- Trade financing transactions with unusual pricing features

*High risk geographies:*

- Countries in which the production of illegal drugs may be taking place
- Areas in which money launderers may seek to deposit funds due to the absence of bank secrecy laws
- Emerging countries which may be seeking hard currency investments
- Major money laundering countries identified in the U.S. Department of State's *International Narcotics Strategy Annual Report*.

A savings association should have policies and procedures designed to detect and prevent money laundering activities as part of its written BSA compliance program. An effective program should:

- Define the different forms of money laundering;
- Provide compliance with BSA and related anti-money laundering laws and regulations;
- Establish a "Know Your Customer" program; and
- Identify high risk activities, businesses and foreign countries commonly associated with money laundering.

An effective anti-money laundering program should extend to all of the association's operations, including retail, fiduciary, loan, private banking, etc. (refer to the Examination Procedures for a more complete list).

An effective anti-money laundering program should have as its cornerstone a high level of internal controls to minimize the risk of money laundering. Those controls should include, at a minimum: (1) money laundering detection procedures; (2) identification and monitoring of non-bank financial institutions that are depositors of the institution and that engage in a high volume of cash activity; (3) periodic account activity monitoring; and, (4) internal investigations, monitoring and reporting of suspicious transactions.

Money laundering activities are discussed in further detail in the “Know Your Customer” and “Suspicious Activities” subsections. Other subsections, such as “Education and Training” also include money laundering elements.

### “Know Your Customer”

Note: Although the proposed “Know Your Customer” (KYC) regulation was withdrawn, savings associations need to guard against money laundering and identify suspicious activities. An effective anti-money laundering program is expected in all savings associations. Examiners will review the program adopted by the savings association, determine its ability to adequately identify and control the risks of exposure to money laundering activities, and evaluate the savings association’s adherence to the program

Illicit activities, such as money laundering, fraud and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of financial institutions. The exposure of these activities damages the reputation of the institution and may subject it to criminal proceedings. An effective KYC policy, coupled with effective procedures for reporting suspicious transactions, can help protect the institution against money laundering activity and other financial crimes by minimizing the risk that the institution will be used for illicit activities. An effective policy also helps protect the institution’s reputation, detect suspicious activity in a timely manner, and reduces the risk of government seizure and forfeiture of a customer’s loan collateral. For these reasons, savings associations are strongly encouraged to adopt KYC policies.

### Objectives

An effective KYC policy should contain a clear statement of management’s overall expectations and establish specific line responsibilities. The objectives of a KYC policy are to:

- Facilitate the institution’s compliance with applicable laws and regulations, including the BSA and OTS’s compliance (12 CFR 563.177) and suspicious activity reporting regulations (12 CFR 563.180);

- Facilitate safe and sound banking practices;
- Decrease the likelihood that the institution will become a victim of illegal activities perpetrated by its “customers;”
- Protect the good name and reputation of the institution; and
- Not interfere with the relationship of the institution and its legitimate customers.

### Contents

An association’s KYC policy should be appropriate to its size, location, and complexity of business. It should also reflect the types of customers it serves, the nature and extent of their activities at the association, and other factors that the association considers in its assessment of the risks associated with its customers and their transactions. An effective KYC policy should enable the association to understand the kinds of transactions that particular customers are likely to engage in. Therefore, the association should collect sufficient information to develop a customer profile to ensure compliance with the suspicious activity reporting requirements.

An effective KYC policy should incorporate the following principles into the association’s business practices:

- Determine the true identity of all customers requesting its services;
- Determine the customer’s source(s) of funds for transactions involving the association;
- Determine the particular customer’s normal and expected transactions involving the association;
- Monitor customer transactions to determine if they are consistent with the normal and expected transactions for that customer or for similar categories or classes of customers established by the association;
- Identify customer transactions that do not appear to be consistent with normal and expected transactions for that particular customer or for customers in similar categories or classes; and

- Determine if a transaction is unusual or suspicious in accordance with 12 CFR 563.180 and, if so, report those transactions.

Further, an effective KYC policy should provide for and document the following features to ensure compliance with the association's KYC program:

- A system of internal controls to ensure ongoing compliance;
- Independent testing for compliance;
- An individual(s) responsible for coordinating and monitoring day-to-day compliance; and
- Training to all appropriate personnel on a regular basis regarding the content and procedures of the KYC policy or program.

#### Identifying the Customer

A relationship with an association should generally not be established until the identity of a potential customer is satisfactorily established. The following general principles can be followed when establishing customer relationships:

##### *Personal Accounts*

- Require satisfactory identification to open an account (e.g., a driver's license with a photograph issued by the state in which the association is located; or a U.S. passport or alien registration card together with a college photo identification card, a major credit card (verify the current status), an employer identification card, and/or a current utility bill from the customer's present address).
- Consider the location of the customer's residence or place of business. If it is not in the area served by the association's office or branch, question why the customer is not opening an account at that location.
- Call the customer's residence or place of employment to thank him or her for opening the account. Disconnected phone service or no record of employment warrant further investigation.

- Consider the source of funds used to open the account. Large cash deposits should be questioned.
- For large accounts, ask the customer for a prior financial institution reference and, if appropriate, write a letter to the institution asking about the customer.
- Check with service bureaus for indications the customer has been involved in questionable activities such as kiting incidents and NSF situations.
- The identity of a customer may be established through an existing relationship with the institution such as some type of loan or other account relationship.
- A customer may be a referral from an association employee or one of the association's accepted customers. A referral alone is not sufficient to identify the customer, but in most instances should warrant less vigilance than otherwise required.

##### *Business Accounts*

- Ask business principals for evidence of legal status to open a business account (e.g., sole proprietorship, partnership, or incorporation or association).
- Determine the beneficial ownership of accounts in private banking, fiduciary departments, and other specialized departments. The association should pay particular attention to corporate entities, international business corporations, bearer share companies, or nominee officers, especially if those organizations are based in jurisdictions with minimal money laundering laws.
- For payable through accounts with foreign banks, require satisfactory identification for all sub-account holders.
- Check the name of a commercial enterprise with a reporting agency and check prior bank references.

- Call the customer's business to thank him or her for opening the account. Disconnected phone service warrants further investigation.
- If appropriate, visit the business to verify its existence and its ability to provide the services described.
- Consider the source of funds used to open the account. Large cash deposits should be questioned.
- Especially for large commercial accounts, obtain a:
  - Financial statement of the business;
  - Description of the customer's principal line of business;
  - Description of the business's primary trade area, and whether international transactions are expected to be routine; and
  - Description of the business operations, such as retail versus wholesale, and the anticipated volume of cash sales.

An effective BSA compliance program also recognizes that certain customer transactions are suspicious in nature. A savings association must know its customers to be able to make an informed decision as to the suspicious nature of a particular transaction. The following subsection discusses potentially suspicious activities that may warrant further review or investigation.

### Suspicious Activities

#### Suspicious Conduct and Transactions

There are certain categories of conduct or activities that are suspicious in nature and should alert a savings association to the potential for the customer to conduct illegal activities. Examples are grouped by topic and provided below.

*Activities that may be inconsistent with the customer's business:*

- A customer opens several accounts for the type of business he or she purportedly is conducting or frequently transfers funds among these accounts.
- A customer's corporate account(s) has deposits or withdrawals primarily in cash rather than checks.
- The owner of both a retail business and a check cashing service does not ask for cash when depositing checks, possibly indicating the availability of another source of cash.
- The customer's account has unusual activity in cash purchases of money orders and cashier's checks.
- A large volume of cashier's checks, money orders, or wire transfers are deposited into an account in which the nature of the account holder's business would not appear to justify such activity.
- A customer frequently makes large bill transactions (such as deposits, withdrawals, or purchases of monetary instruments) without an explanation as to how it will be used in the business or the purchases allegedly are for a business that generally does not deal in large amounts of cash.
- Business account history that shows little or no regular, periodic activity; the account appears to be used primarily as a temporary repository for funds that ultimately are transferred abroad.
- A customer's place of business or residence is outside the financial institution's service area.
- A corporate customer who frequently makes large cash deposits and maintains high balances, but does not use other banking services.
- The customer routinely makes numerous deposits of checks from a retail business but rarely makes cash withdrawals for daily operations.
- A retail business has dramatically different patterns of cash deposits from similar businesses in the same general location.
- The currency transaction patterns of a business experience a sudden and inconsistent change from its normal business activities.



- The amount and frequency of cash deposits are inconsistent with the activity observed at the customer's place of business.
- The business frequently deposits large amounts of cash, but checks or other debits drawn against the account are inconsistent with the customer's retail business.
- Businesses that do not normally generate currency make numerous currency transactions.
- Financial transactions involving monetary instruments that are incomplete or contain fictitious payees, remitter, etc., if known.
- Unusual transfer of funds among related accounts or accounts that involve the same principal or related principals.
- A business owner, such as an owner who has only one store, who makes several deposits the same day using different branches.
- Frequent deposits of currency wrapped in currency straps or currency wrapped in rubber bands that is disorganized and does not balance when counted.
- Frequent deposits of musty or extremely dirty bills.
- A customer who purchases cashier's checks, money orders, etc., with large amounts of cash.
- A professional customer who makes substantial deposits of cash into client accounts or in-house company accounts, such as trust and escrow accounts.
- Domestic accounts opened in the name of a *casa de cambio* (money exchange house), followed by suspicious wire transfers or structured deposits into these accounts.
- Suspicious movements of funds out of one institution into a second one and back into the first institution. For example, the following scheme has been observed: (1) purchasing cashier's checks from bank A; (2) opening a checking account at bank B; (3) depositing the cashier's checks into bank B's checking account; and (4) wire transferring the funds out of the checking account at bank B to an account at bank A.

*Other suspicious customer activities:*

- A substantial deposit of numerous \$50 and \$100 bills.
- A mailing address outside the United States.
- Frequent exchanges of small and large bills.
- A certificate(s) of deposit or other investment vehicle used as collateral for a loan.
- A large problem loan is suddenly paid down with no reasonable explanation of the source of funds.
- Excessive use of safe deposit boxes or changing traffic patterns in the safe deposit box areas.
- A safety deposit box is often accessed before the customer makes cash deposits which are just under the threshold for reporting the transaction.
- A customer who rents multiple safe deposit boxes.
- Frequent deposits of large amounts of currency wrapped in currency straps that have been stamped by other financial institutions.
- Offshore companies, especially those located in bank secrecy haven countries, ask for a loan from a domestic U.S. bank or for a loan secured by obligations of offshore banks.
- Use of loan proceeds in a manner inconsistent with the stated purpose of the loan.
- A nonaccount holder who purchases a monetary instrument with large denominated bills.
- A customer who purchases a number of cashier's checks, money orders, or traveler's checks for large amounts under a specified threshold, or without apparent reason.
- Couriers, rather than personal account customers, make the deposits to the account.
- Money orders, deposited by mail that have unusual symbols or stamps on them.

*Conduct and activities that may indicate avoidance or reporting or recordkeeping requirements:*

- A business or new customer asks to be placed on the association's exemption list.
- Frequent requests for increases in exemption limits.
- An urgent request to be included on the association's exemption list.
- A customer who tries to engage in a transaction in excess of a specified threshold who, when advised of the recordkeeping or reporting requirements, withholds part of the currency deposit to keep the transaction under that threshold.
- A customer who is reluctant to provide the information needed to file the mandatory report, or have the report filed, or to proceed with a transaction after being informed that the report must be filed.
- A customer or group tries to coerce an association employee into not filing any required recordkeeping or reporting forms.
- An automatic teller machine is used to make several deposits below a specified threshold.
- Unusually large deposits of U.S. food stamps (often used as currency in exchange for narcotics).
- A customer who is reluctant to furnish identification when purchasing negotiable instruments in recordable amounts.

*Activities related to fund (wire) transfers:*

- Sending and receiving wire transfers to or from bank secrecy haven countries without an apparent business reason or when they are inconsistent with the customer's business or history.
- Periodic wire transfers from a personal account(s) to bank secrecy haven countries.
- Frequent or a large volume of wire transfers to and from offshore institutions (banking centers).

- Deposits of funds into several accounts, usually in amounts below a specified threshold, which are subsequently consolidated into one master account and transferred outside of the country.
- A customer makes large volumes of deposits to several different accounts and subsequently frequently transfers major portions of the balances to a single account at the same or another financial institution.
- Instructions to a financial institution to wire transfer funds abroad and to expect an incoming wire transfer of funds, in an equal amount, from other sources.
- Regular deposits or withdrawals of large amounts of cash, using wire transfers to, from, or through countries that are either known sources of narcotics or whose laws are ineffective in controlling the laundering of money.
- • Wire transfers received and monetary instruments purchased immediately for payment to another party.

*Conduct that may indicate insufficient or suspicious information by a customer:*

- The reluctance of a business which is establishing a new account to provide complete information about the purpose of business, its prior banking relationships, names of its officers and directors, and information about the location of the business.
- A customer's refusal to provide the usual information necessary to qualify customers for credit or other banking services.
- A customer's unwillingness to provide personal background information when opening an account or purchasing monetary instruments above a specified threshold.
- A customer who desires to open an account without providing references, a local address, or identification, or who refuses to provide any other information the association requires to open an account.
- Unusual or suspicious identification documents that the association cannot readily verify.

- The discovery that a customer's home phone is disconnected.
- No record of past or present employment on a loan application.
- A customer who makes frequent or large transactions who has no record of past or present employment experience.
- The customer's background varies with his or her business activities.
- The customer is reluctant to reveal details about business activities or to provide business financial statements.
- The customer's financial statements differ from those of similar businesses.

*Employee activities:*

- Lavish lifestyle cannot be supported by an employee's salary.
- Reluctance to take a vacation.

*Institution to institution transactions:*

Significant changes in currency shipment patterns between correspondent institutions.

Larger amounts of cash without a corresponding increase in the filing of mandatory CTRs.

Deposits with the Federal Reserve Bank or its branches are disproportionate to the previous historical volume(s) of similarly sized financial institutions.

Significant turnover in large denomination bills that would appear uncharacteristic given the association's location.

CTRs, when filed, are frequently incorrect or incomplete.

A large increase in small denomination bills and a corresponding decrease in large denomination bills with no corresponding CTR filings.

The rapid increase in the size and frequency of cash deposits with no corresponding increase in noncash deposits.

Reporting

Note: OTS regulations (12 CFR 563.180) are not limited to money laundering and BSA violations. They apply to any possible violation of federal law or regulation that meet the regulatory criteria. These other activities, such as robberies, are more fully discussed in Section 405, Bank Protection Act.

Effective April 1, 1996, savings associations and their service corporations are required by section 563.180 to file a suspicious activity report (SAR) when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the BSA.

A SAR is required to be filed for any known or suspected Federal criminal violation, or pattern of criminal violations: (1) involving insider abuse in any amount, (2) aggregating \$5,000 or more where a suspect can be identified; or (3) aggregating \$25,000 or more regardless of a potential suspect.

A SAR is also required to be filed for any transaction conducted or attempted by, at or through the savings association or service corporation and aggregating \$5,000 or more, if the savings association or service corporation knows, suspects, or has reason to suspect that the transaction:

- May involve potential money laundering (referred to in the regulations as illegal activities);
- Is designed to evade the BSA or its implementing regulations; or
- Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts.

"Transaction" is broadly defined using the definition of money laundering found in 18 U.S.C. §§ 1956 and 1957. Consequently, transaction includes a deposit, withdrawal, transfer between accounts,

exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by what ever means effected.

A savings association is required to file a SAR with FinCEN (OTS has access to the SAR through FinCEN) no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case can the reporting be delayed more than 60 calendar days.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, a savings association is required to immediately notify, by telephone, an “appropriate law enforcement authority” and the OTS in addition to filing a timely SAR. An “appropriate law enforcement authority” generally would be the local office of the IRS, Criminal Investigation Division or the FBI.

### **Reporting Requirements**

The reports that financial institutions are required to file are:

- Reports of Suspicious Transactions (31 CFR 103.21);
- Reports of Currency Transactions (31 CFR 103.22);
- Reports of Transportation of Currency or Monetary Instruments (31 CFR 103.23);
- Reports of Foreign Financial Accounts (31 CFR 103.24);
- Reports of Transactions With Foreign Financial Agencies (31 CFR 103.25); and
- Reports of Certain Domestic Coin and Currency Transactions (31 CFR 103.26).

This Handbook covers the first four reports. The first three reports are included as Exhibits A, B and C.

#### Suspicious Activity Report (OTS Form 1601)

A Suspicious Activity Report (SAR) must be filed for any transaction involving \$5,000 or more when the institution knows, suspects, or has reason to suspect that a transaction:

- Involves money laundering;
- Is designed to evade BSA regulations; or
- Has no business or apparent lawful purpose or is not the type that the customer would normally be expected to undertake.

The SAR must be filed with the U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN) within 30 days after the initial detection of facts giving rise to an SAR filing. If no suspect was initially identified, the SAR may be delayed for an additional 30 calendar days to identify a suspect. The “Suspicious Transactions” subsection contains a more detailed discussion of the SAR and suspicious activities.

#### Currency Transaction Report (Form 4789)

A Currency Transaction Report (CTR) must be filed for each transaction in currency (deposit, withdrawal, exchange or other payment or transfer) of more than \$10,000. A completed CTR must be filed with the Internal Revenue Service (IRS) within 15 days after the date of the transaction. Multiple transactions totaling more than \$10,000 during any one business day are treated as a single transaction if the institution has knowledge that they are by or on behalf of any person. Certain types of currency transactions need not be reported, such as those involving “exempt persons” or those generated by particular retail or commercial customers meeting specific criteria for exemption. These exemptions are discussed below.

#### Currency and Monetary Instrument Report (Form 4790)

A Currency and Monetary Instrument Report (CMIR) must be filed for each shipment of currency

or other monetary instrument(s) in excess of \$10,000 out of or into the U.S., except via the postal service or common carrier. When a person physically transports monetary instruments into or out of the U.S., a CMIR must be filed with the appropriate U.S. Customs officer or the Commissioner of Customs at the time of entry into or departure from the U.S. When a person receives monetary instruments shipped from any place outside the U.S., a CMIR must be filed with the appropriate U.S. Customs officer or the Commissioner of Customs within 15 days of receipt of the receipt of the instruments (unless a report has already been filed).

#### Report of Foreign Financial Accounts (Treasury Form 90-22)

Each person subject to U.S. jurisdiction with a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country must file a Report of Foreign Bank Financial Accounts concerning such relationship with the IRS annually.

#### Amended Reports

Institutions should file an amended report if they have failed to make appropriate corrections as a result of correspondence from the IRS or a form fails to provide critical information. The IRS expects forms to be typed or printed legibly. When the IRS requires a response, the institution should make that response within 10 days.

#### **Exemptions From Reporting Large Currency Transactions**

(Note: On September 7, 1997, Treasury published a notice of proposed rulemaking that would further modify the rules for granting exemptions from the currency transaction report filing requirements. That proposal is not included in this Handbook section.)

#### Background

Treasury regulations have historically recognized that routine reporting of some large currency transactions does not necessarily aid law enforcement authorities and, at the same time, may place unreasonable burdens on financial institutions. Consequently, a financial institution may be exempt from filing CTRs on certain types of customers who regularly deal in large amounts of currency. For example, a financial institution may be exempt if the amount of currency involved with a customer does not exceed what that customer typically receives from a lawful business.

The Money Laundering Suppression Act of 1994 (MLSA) requires a two-tier exemption system. Under the first tier, or “mandatory” exemptions, cash transactions of governments, financial institutions and major businesses are not reportable. The second tier, or “discretionary” exemptions, addresses smaller businesses. A third category of exemptions contained in Part 103 addresses certain designated organizations.

#### Mandatory Exemptions (31 CFR 103.22(h))

Under the MLSA, as implemented by FinCEN’s final rule dated September 7, 1997 and effective January 1, 1998, a financial institution is not required to file a CTR for transactions by “exempt persons.” The final rule permits – but does not require – financial institutions to use the simplified exemption procedures for certain types of customers. A financial institution may choose to operate under the previous, more labor-intensive procedures (discussed in the following section). However, the institution will remain subject to all of the regulatory requirements and penalty rules. In contrast, the revised exemption procedures afford financial institutions a limitation on liability.

The previous rules required a separate exemption for each account, regardless of the institution’s ability to monitor daily aggregate transactions. The final rule exempts customers, not accounts. It places no limit on the dollar amount of an exemption. The final rule also extends the exemption to all transactions; the prior rule is limited to deposits and withdrawals.

The final rule identifies six categories of “exempt persons”:

1. A bank, to the extent of its domestic operations;
2. A federal, state or local government agency or department;
3. Any entity exercising governmental authority within the U.S.;
4. Any entity (other than a bank) whose common stock is listed on the New York, American, or NASDAQ stock exchanges (with some exceptions);
5. Any subsidiary (other than a bank) of any “listed entity” that is organized under U.S. law and at least 51 per cent of whose common stock is owned by the listed entity; and
6. Any non-bank financial institution that is, or is a subsidiary of, a listed entity, to the extent of its domestic operations.

To assure itself that a customer is exempt, an institution must take steps comparable to those that a reasonable and prudent institution would take and document to protect itself from loan or other fraud or loss based on misidentification of a person’s status. The final rule includes “operating rules” (31 CFR 103.22(h)(4)) detailing these steps. To summarize:

- For banks and government agencies, the same documentation an institution receives authorizing the establishment of a business account is generally sufficient (e.g., a corporate resolution). Any documentation that demonstrates that a customer is a bank is sufficient. In the case of small governmental units, such as a volunteer fire department, an institution may rely on reasonable documentation, based on the type and nature of the governmental agency involved.
- For entities exercising governmental authority, such as the New Jersey Turnpike Authority or the Port Authority of New York, an institution must determine and document the characteristics that make such an authority governmental in nature, such as the authority to exercise emi-

nent domain, the authority to tax the public, or the authority to routinely exercise police powers.

- For listed corporations, an institution may consult newspapers or weeklies to determine if a company is listed on an exchange. An institution may also rely on information available electronically from the SEC or on stock exchange Web sites.
- For subsidiaries, any reasonable documentation will be sufficient, including a letter signed by a company officer, a tax return or the entity’s Annual Report of Form 10-K.
- Franchises are not exempt simply because the company that awards the franchise license is exempt. The institution must determine whether the franchise is itself a publicly traded corporation or its consolidated subsidiary.

To take advantage of this exemption procedure, an institution must designate a customer as an exempt person within 30 days of a reportable transaction and stop filing CTRs. A designation of exemption is made by filing a single CTR in which Part I, Section A and Part III are fully completed and box 36 is marked “Designation of exempt person.”

Financial institutions will not be penalized for using reasonable judgment with regard to designating exemptions under the final rule, even if that judgment is occasionally wrong. However, an institution remains subject to a penalty if it knowingly files false or incomplete information or has reason to believe at the time of exemption that the customer is not eligible or that the transaction is not a transaction of the exempt person.

Finally, an institution is required to verify the status of those entities it has designated as exempt persons once a year, unless there is reason to believe that a customer no longer meets the exemption criteria or someone other than the exempt person engages in the transaction.

Exemptions Involving Designated Organizations  
(31 CFR 103.22(b))

CTRs need not be filed:

- For transactions with Federal Reserve or Federal Home Loan Banks;
- For transactions between domestic banks; or
- By nonbank financial institutions for transactions with commercial banks (however, commercial banks must report transactions with nonbank financial institutions).

Discretionary Exemptions (31 CFR 103.22(c))

Financial institutions may exempt certain transactions of certain retail or commercial customers in amounts commensurate with the customary and lawful business operations of that customer. These exemptions must be in accounts which the financial institution may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer. These exemptions include:

- Deposits or withdrawals of currency from an existing account by an established depositor who is a U.S. resident and operates a domestic retail business;
- Deposits or withdrawals of currency from an existing account by an established depositor who is a U.S. resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, licensed check cashing service, vending machine company, theater, regularly scheduled passenger carrier or any public utility;
- Deposits or withdrawals, exchanges of currency or other payments and transfers by federal, state or local governments or agencies; or
- Withdrawals for payroll purposes from an existing account by an established depositor who is a U.S. resident and operates a firm that regularly withdraws more than \$10,000 to pay its employees.

Exemption Lists; Recordkeeping Requirements (31 CFR 103.22(d) and (f))

An institution may only place those customers on its exempt list who attest to the basis for the exemption in a written statement that describes the customary conduct of the business and a detailed statement of reasons why that customer is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number and account number of the customer being exempted. The regulation also requires a certification statement, the form and content of which is specifically described in section 103.22(d).

An institution is responsible for independently verifying the account activity and determining dollar limits for exempted deposits or withdrawals. The exempted transactions must be in amounts that the institution may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer.

An institution must keep a record of each exemption granted and the reason for granting the exemption in a centralized list. The record must include: (1) the names and addresses of domestic banks or correspondent banks with whom the financial institution conducts transactions; and, (2) the name, address, business, taxpayer identification number and account number of each depositor that has engaged in currency transactions that have not been reported due to the granting of a “discretionary” exemption. The later record must also indicate whether the exemption covers withdrawals, deposits, or both, and the dollar limit of the exemption.

Lists that appear inordinately long or that contain names of customers whose business size or nature would not ordinarily merit exempt status should be discussed with management. If management cannot provide adequate explanation or supporting documentation, the matter should be reported.

Management is also responsible for reviewing and updating the exempt list to ensure the continued exempt status of customers, to add new exemptions, and to delete customers who no longer qualify for exempt status. Treasury recommends review at least annually.

### Effect on Other Regulatory Requirements

The mandatory exemption procedures do not create any exemption, or have any effect at all, on the requirement that financial institutions file suspicious activity reports. Similarly, a customer's status as an exempt person has no impact on other BSA requirements relating to record retention or reporting. For example, the fact that a customer is an exempt person has no effect on the obligation of a financial institution to retain records of funds transfers by that person, or to retain records in connection with the sale of cashier's checks to that person.

If an institution has improperly exempted accounts, the examiner can instruct the institution's management to remove the account from the exemption list, begin filing CTRs, and write to the IRS Detroit Computing Center for a determination on whether backfiling of unreported transactions is necessary. The decision to backfile CTRs rests with FinCEN.

Financial institutions who wish to obtain more information about the currency exemption process should review the Treasury's Currency and Foreign Transactions Reporting Act Exemption Handbook or contact the Treasury's Financial Crimes Enforcement Network (FinCEN) at 1-800-949-2732 or 703-905-3920.

### **Recordkeeping Requirements**

The following summarizes the significant BSA recordkeeping requirements. The summary is not all-inclusive: some requirements contain an additional level of detail, and others contain some exceptions.

An institution must develop and maintain a properly completed exemption list centralized in one location, with detailed supporting documentation. See the "Exemptions from Reporting Large Currency Transactions" subsection, the Examination Procedures and 31 CFR 103.22 for the detailed recordkeeping requirements.

Institutions are prohibited from issuing or selling monetary instruments (e.g., bank checks or drafts, cashier's checks, money orders or traveler's checks) in amounts between \$3,000 and \$10,000 unless the institution verifies the identity of the customer and maintains detailed supporting documentation, in-

cluding the name of the purchaser, date of purchase, type of instrument purchased, etc. See the "Cash Sales of Monetary Instruments" subsection, Examination Procedures and 31 CFR 103.29(a) for the detailed recordkeeping requirements.

An institution must collect and retain certain information in connection with wire (fund) transfers of \$3,000 or more. The information required to be collected and retained depends upon the type of financial institution, its role in the wire transfer (originator, intermediary, or beneficiary), the amount of the wire transfer, and the relationship of the parties to the transaction with the financial institution. See the Examination Procedures and 31 CFR 103.33(e) and (g) for the detailed recordkeeping requirements.

Section 103.33 also requires financial institutions to retain:

- Documentation to support each extension of credit over \$10,000 (except when the extension is secured by an interest in real property);
- Each advice, request, or instruction received regarding a transaction that results in the transfer of funds, currency, checks, investment securities, other monetary instruments or credit, of more than \$10,000 to a person, account, or place outside the United States; and
- Each advice, request, or instruction given to another financial institution or other person located within or outside the United States, regarding a transaction intended to result in a transfer of funds, currency, checks, investment securities, other monetary instruments or credit, of more than \$10,000, to a person, account, or place outside the United States.

Section 103.34 requires financial institutions to keep the following records:

- A list of each individual who holds a deposit account for which the institution has been unable to secure a taxpayer identification number;
- Each document granting signature authority over each deposit account;
- Each statement, ledger card, or other record of each deposit account;



- Each document relating to a transaction of more than \$10,000 remitted or transferred to a person, account or place outside the United States;
- Each check or draft in excess of \$10,000 drawn on or issued by a foreign bank that the domestic bank has paid or presented to a nonbank drawee for payment;
- Each item relating to any transaction over \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker, or dealer in foreign exchange outside the United States;
- Records prepared or received by a bank in the ordinary course of business that would be needed to reconstruct a demand deposit account and to trace a check in excess of \$100 deposited in such demand deposit account;
- A record containing certain specified information of any person presenting a certificate of deposit for payment, and a description of the instrument and date of the transaction; and
- Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions.

Finally, each of the reports discussed in the “Reporting Requirements” subsection include record-keeping requirements.

An institution is required to retain either the original, microfilm, copy or other reproduction of the relevant documents. All records must be retained for at least 5 years. Records required to be retained by the reporting requirements may be those made in the ordinary course of business by an institution. If no record is made in the ordinary course of business in connection with any transaction where records are required to be retained, a record must be prepared in writing by the institution.

All required records – the identifying information as well as information about the transaction—must be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record and the amount of time expired since the record was made. The retrievability of records in connection with wire

(fund) transfers is discussed separately in that subsection.

### **Sale of Monetary Instruments**

Financial institutions sell a variety of monetary instruments for cash (e.g., bank checks or drafts including foreign drafts, money orders, official checks and traveler’s checks). Purchasing these instruments in amounts of less than \$10,000 is a common method used by money launderers to evade large currency transaction reporting requirements. Once converted from cash, criminals typically deposit these instruments in aggregation accounts with other depository institutions to facilitate the movement of funds through the payment system. In many cases, the individuals involved do not have an account with the institution from which the instruments are purchased.

Section 103.29 of Treasury’s regulations requires institutions to verify the identity of individuals purchasing monetary instruments with currency in amounts between \$3,000 and \$10,000, inclusive, and to maintain records of all such sales.

Institutions may either verify that the purchaser of monetary instruments is a deposit account holder with identifying information on record with the institution or may verify the identity of the purchaser by viewing a piece of identification that contains the customer’s name and address and is acceptable within the banking community as a means of identification when cashing checks for noncustomers. The method used to verify the identity of the purchaser must be recorded.

Treasury’s Administrative Ruling 92-1 provides guidance on how an institution can verify the identity of an elderly or disabled customer who does not possess the normally acceptable forms of identification. An institution may accept a social security card or Medicare/Medicaid card along with another form of documentation bearing the customer’s name and address. The additional documentation may be in the form of a utility bill, a tax bill, or voter registration card. The forms of alternate identification an institution decides to accept must be included in the formal policies and procedures.

Part 103 provides that the records of sales must contain, at a minimum, the following information:

If the purchaser has a deposit account with the association:

- the name of the purchaser;
- the date of purchase;
- the type(s) of instrument(s) purchased;
- the serial number(s) of each of the instrument(s) purchased;
- the dollar amount(s) of each of the instrument(s) purchased in currency; and
- the method of verification of identity, and

If the purchaser does not have a deposit account with the association:

- the name and address of the purchaser;
- the social security or alien identification number of the purchaser;
- the date of birth of the purchaser;
- the date of purchase;
- the type(s) of instrument(s) purchased;
- the serial number(s) of each of the instrument(s) purchased;
- the dollar amount(s) of each of the instrument(s) purchased; and
- the method of verifying the identity of the purchaser and specific identifying information (e.g. State of issuance and number of driver's license).

If the required information cannot be provided by the purchaser at the time of the transaction or by the association's own previously verified records, the transaction must be refused.

Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more must be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more must be aggregated and treated as one purchase if the association has knowledge that the purchases have occurred. The records of monetary instrument

sales must be retained for 5 years and be available to the Secretary of the Treasury upon request.

### **Wire Transfers**

The primary purpose of the BSA is to identify the sources, volume, and movement of funds. Historically, money laundering activity centered around currency-based transactions. However, recent evidence indicates that the funds transfer systems are not immune to illegal activity. The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 to authorize Treasury and the Federal Reserve Board to prescribe regulations regarding domestic and international funds transfers. In January 1995 the Treasury and the Board issued a final rule, effective May 28, 1996, on recordkeeping and retrieval requirements concerning payment and transmittal orders by financial institutions. The rule requires each domestic financial institution involved in funds transfer to collect and retain certain information depending upon the type of financial institution, its role in the particular wire transfer, the amount of the wire transfer, and the relationship of the parties to the transaction with the financial institution.

The FFIEC has also adopted a policy statement on money laundering activities involving large-value funds transfers (TB 57). The policy statement encourages all financial institutions to record in the message text of the order the name, address, and account number of both the originator and beneficiary to the transaction. This includes payment orders sent through Fedwire, CHIPS, SWIFT, and any proprietary networks. OTS also encourages all savings associations to modify their existing wire transfer procedures to ensure the provisions of the policy statement are followed.

### **Payable Through Accounts**

A payable through account (PTA) is a demand deposit account through which banking entities located in the U. S. extend check-writing privileges to the customers of a foreign bank operating outside the U.S. Under this arrangement, a U. S. bank, Edge corporation or the U. S. branch or agency of a foreign bank opens a master checking account in the name of the foreign bank. The foreign bank subsequently divides the master account into sub-

accounts in the name of one of the foreign bank's customers. Deposits into the master account may flow through the foreign bank, which pools them for daily transfer to the U. S. banking entity, or the funds may flow directly to the U. S. banking entity for credit to the master account, with further credit to the sub-account.

PTA activities differ from traditional correspondent banking relationships in that correspondent relationships typically involve an arrangement under which bank "A" processes and completes transactions for bank "B's" customers or bank "B" itself. Under that arrangement, Bank B's customers are generally not aware of the correspondent relationship and do not have access to Bank B's account at Bank A. In a PTA relationship, the sub-account holders have direct control of the PTA due to their signatory authority over the foreign bank's account at the U.S. banking entity.

Although the use of PTAs by savings associations has been relatively rare, recent evidence suggests that some financial institutions may not be exercising the same degree of care regarding these accounts that they exercise for domestic customers. For example, an institution may simply collect signature cards that have been completed abroad and then process checks issued by sub-account holders. These institutions undertake little or no effort to independently obtain or verify information about the individuals and businesses who use their accounts.

The Federal banking agencies are concerned, based on recent reports from law enforcement agencies and their own investigatory efforts, that the lack of safeguards over these accounts may facilitate unsafe and unsound banking practices, including money laundering and related criminal activities. Consequently, savings associations are encouraged to become familiar with PTAs and to develop and maintain procedures, as appropriate to their activity, to guard against possible improper or illegal use of payable through accounts.

Adopted procedures should enable a savings association offering PTA services to foreign banks to identify the ultimate users of its foreign bank customers' PTAs. The institution should have the ability to review, and obtain when necessary, the same type of information on each ultimate user of its payable through service as the institution obtains

for its domestic customers. If the institution is unable to appropriately review the identifying information, steps should be taken to terminate the payable through relationship as expeditiously as possible.

### **Economic Sanctions**

The Office of Foreign Assets Control (OFAC) of the U. S. Department of the Treasury is responsible for administering a series of laws that impose economic sanctions against select foreign countries to further U.S. foreign policy and national security objectives. Compliance with OFAC regulations by financial institutions requires the blocking of accounts of certain countries or individuals under certain circumstances. Because some of those circumstances relate to money laundering, an effective know your customer program is an important component of ensuring compliance with OFAC regulations. Section 415 of the OTS Compliance Activities Handbook contains information on economic sanctions and a copy of OFAC regulations.

### **Examination Objectives**

1. To determine whether the institution's operating policies, procedures and practices are adequate to enable management or other responsible personnel to readily identify all of the currency and monetary transactions covered by the BSA.
2. To determine whether policies and procedures have been implemented covering the detection and prevention of money laundering activities or BSA violations.
3. To evaluate the effectiveness of the institution's compliance program for the BSA, including identifying suspicious transactions that may involve money laundering activity.
4. To ascertain whether established compliance guidelines and operating procedures are regularly tested by independent personnel.
5. To verify that the institution completes and maintains all applicable records required by the BSA regulations.
6. To verify that the institution files accurately and within specific time limits the required

forms for the various types of currency and monetary instrument transactions.

7. To determine the institution's compliance with the BSA and its implementing regulations.

### **Examination Procedures**

1. The purpose of the examination procedures is to determine whether the financial institution has developed written policies, operating procedures, and reliable methods to record and report the data necessary for compliance with the Bank Secrecy Act and implementing Treasury and OTS regulations and to detect and/or prevent money laundering activities. The procedures are designed to maximize the efficiency of the review process by using sampling or by requiring the institution to perform some analyses. Consistent with the examination approach discussed in Section 105 of this Handbook, the specific procedures performed during an examination may vary depending on whether the examiner discovers problems or internal control weaknesses. Some procedures require sampling, which may be completed by the examiner or by the institution.
2. The narrative to this Handbook section contains detailed information on how to report and detect suspicious activities. The examination procedures do not contain a specific subsection on suspicious activities because they can be identified by performing procedures in various areas that are reviewed (e.g., exemptions, large cash transactions). References to applicable laws, regulations or other authorities are noted in parens at the end of the examination procedure.
3. As noted previously, "Know Your Customer" policies and procedures are an accepted, albeit optional, means to help prevent money laundering. The following references to "Know Your Customer" policies date from the November 1998, examination procedures revision. Further revision of these procedures, with respect to KYC, are under consideration. Meanwhile, examiners should consider explicit KYC programs to be optional. When a savings association chooses to implement a KYC program, the examiner may use the standards called for in

these procedures to help evaluate the program. In the absence of voluntary KYC programs, examiners will review the program adopted by the savings association, determine its ability to adequately identify and control the risks of exposure to money laundering activities, and evaluate the savings association's adherence to the program.

### **Off-Site Examination Planning**

Note: Section 110 of this Handbook discusses pre-examination analysis and scoping. The following discusses those items in the context of the BSA portion of an examination.

1. Review previous examination and supervisory activities to ascertain the institution's history of BSA compliance, including previous examination reports and related correspondence, and any available information from FinCEN or other outside sources. If any violations or serious deficiencies were noted, ensure in the on-site examination that the institution instituted appropriate corrective action.
2. Review the criminal referral database to determine the existence of any instances of suspicious activity or alleged illegal activity.
3. Review a list of CTRs obtained from the IRS database to determine whether the institution or any branch had a significant change in the total volume of CTR filings compared to the previous examination. The examiner may want to: (1) include a similar request in the PERK package to review similar correspondence that the institution may have received relating to incorrect or incomplete CTRs; and (2) verify during the on-site examination that the institution instituted appropriate corrective action.

### **Internal Compliance Programs and Procedures**

1. Verify that the institution established written policies and operating procedures required by 12 CFR 563.177.
2. Review the written compliance program to ensure that it:

- a) Provides for a system of internal controls to ensure ongoing compliance (Section 563.177©(1)).
  - b) Provides for independent testing for compliance conducted by either institution personnel or an outside party (Section 563.177©(2)).
  - c) Designates a qualified individual(s) responsible for coordinating and monitoring day-to-day compliance (Section 563.177©(3)).
  - d) Provides for training for appropriate personnel (Section 563.177©(4)).
  - e) Is approved by the institution's board of directors and noted in the minutes (Section 563.177(b)).
  - f) Includes procedural guidelines for meeting the reporting and recordkeeping requirements of the BSA regulations.
  - g) Includes procedural guidelines for the detection, prevention, and reporting of suspicious transactions related to money laundering activities.
3. Verify that the procedural guidelines include the following:
- a) The filing of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to the financial institution, which involves a transaction in currency of more than \$10,000 (CTR, IRS Form 4789) (Section 103.22(a)(1)).
  - b) The maintenance of a centralized list containing each exemption granted, with the supporting information prescribed in Section 103.22(f) and, for exemptions granted after 10/27/86, the statement and language required in Section 103.22(b)(2).
  - c) The filing of U.S. Customs Form 4790 for each shipment of currency or other monetary instrument(s) in excess of \$10,000 out of the United States or into the United States, except via common carrier, by, or to the institution (Section 103.23(a)).
  - d) The maintenance of required records for each monetary instrument purchase or sale for currency in amounts between \$3,000 and \$10,000, including the supporting information prescribed in Section 103.29(a).
  - e) The annual filing of "Report of Foreign Bank Financial Accounts" (Treasury Form 90-22) of each person, subject to the jurisdiction of the United States, who has financial interest in, or signature authority over, a bank, securities or other financial accounts in a foreign country (Section 103.24).
4. Verify that the procedural guidelines are adequately communicated to responsible personnel and that they are followed.
5. Determine whether the institution's written procedural guidelines for record retention include the retention of either the original, microfilm, copy or other reproduction of the items listed below, and whether each item is retained for at least five years:
- a) Each CTR (IRS Form 4789) (Section 103.27(a)(3)).
  - b) Documentation to support each exemption granted after October 27, 1986, and after the exemption has been discontinued (Section 103.22(d)).
  - c) Documentation to support each extension of credit over \$10,000, except when the extension is secured by an interest in real property (Section 103.33(a)).
  - d) Each advice, request, or instruction received regarding a transaction that results in the transfer of funds, currency, checks, investment securities, or other monetary instruments or credit, of more than \$10,000 to a person, account, or place outside the United States (Section 103.33(b)).
  - e) Each advice, request, or instruction given to another financial institution or other person located within or outside the United States, regarding a transaction intended to result in a transfer of funds, currency, checks, investment securities, other monetary instruments or credit,

- of more than \$10,000 to a person, account, or place outside the United States (Section 103.33©).
- f) Each payment order of \$3,000 issued in connection with wire (funds) transfer activity as an originating, intermediary or beneficiary institution (Section 103.33(e)).
  - g) A list of each individual, including the name, address, and account number, who holds a deposit account for which the institution has been unable to secure a taxpayer identification number from that person after making a reasonable effort to obtain the number (Section 103.34(a)(1)(ii)).
  - h) Each document granting signature authority over each deposit account (Section 103.34(b)(1)).
  - i) Each statement, ledger card, or other record of each deposit account showing each transaction involving the account, except those items listed in Section 103.34(b)(2-4).
  - j) Each document relating to a transaction of more than \$10,000 remitted or transferred to a person, account or place outside the United States (Section 103.34(b)(5,6)).
  - k) Each check or draft in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment (Section 103.34(b)(7)).
  - l) Each item relating to any transaction of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker, or dealer in foreign exchange outside the United States (Section 103.34(b)(8,9)).
  - m) Records prepared or received by a bank in the ordinary course of business which would be needed to reconstruct a demand deposit account and to trace a check in excess of \$100 deposited in such demand deposit account (Section 103.34(b)(10)).
  - n) A record containing the name, address, and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction (Section 103.34(b)(12)).
  - o) Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved (Section 103.34(b)(13)).

**Internal Controls**

1. Determine whether the institution has implemented an internal audit, management review or self-assessment program that reviews: (1) the institution's compliance program; (2) internal controls to prevent money laundering; and (3) compliance with BSA regulations. Review the adequacy of the audit scope, management review, or self-assessment program, based on the volume and types of BSA-related transactions at the institution.
2. Verify that the audit procedures:
  - a) Confirm the integrity and accuracy of the systems for the reporting of large currency transactions.
  - b) Include a review of tellers' work and Forms 4789 and 4790.
  - c) Confirm the integrity and accuracy of the institution's recordkeeping activities.
  - d) Test adherence to the in-house record retention schedule.
  - e) Include steps necessary to ascertain that the institution is maintaining the required list of exempt customers.
  - f) Test the reasonableness of the exemptions granted.
  - g) Include steps necessary to ascertain that the institution has procedures in place for maintain-

ing required information from customers purchasing monetary instruments for cash in amounts between \$3,000 and \$10,000 inclusive and that appropriate identification measures are in place.

- h) Include steps necessary to ascertain that the institution is conducting an ongoing training program.
- i) Include steps necessary to ascertain that the institution is monitoring cash shipments to and from the Federal Reserve Bank or its correspondent bank(s).

### **Anti-Money Laundering Program**

Note: Following are examination procedures that pertain specifically to anti-money laundering activities. However, other examination procedures also include anti-money laundering elements (e.g., education and training, internal controls, currency flows, etc.).

- 1. Determine whether written policies or operating procedures governing the BSA and anti-money laundering activities:
  - a) Define money laundering in its different forms (e.g., placement, layering, and integration).
  - b) Address compliance with applicable anti-money laundering laws and regulations (e.g., 12 CFR 563.177, 31 CFR 103).
  - c) Establish a “Know Your Customer” program, including account opening, identification, monitoring, and reporting procedures.
  - d) Identify potentially high risk activities, businesses, and foreign countries commonly associated with money laundering.
- 2. Verify that the anti-money laundering policies apply to all operations of the institution, including: (1) activities, including teller and currency operations, the sale of monetary instruments, wire transfers, safe deposit box; (2) departments, including trust, loan, international, discount brokerage; and (3) other operations, including correspondent and private banking.

- 3. Determine whether management has implemented a high level of internal controls to minimize the risk of money laundering. These controls should include, at a minimum:

- a) Money laundering detection procedures, including sound policies and procedures, “Know your Customer” policies, periodic account monitoring, and education and training.
- b) Identification and monitoring of non-bank financial institutions that are depositors of the institution and that engage in a high volume of cash activity (e.g., money transmitters and check cashing businesses).
- c) Periodic account activity monitoring, particularly in accounts considered high risk.
- d) Internal investigations, monitoring, and reporting of suspicious transactions.

### **Know Your Customer Policy**

Note: As discussed in the narrative section, “Know your Customer” policies or procedures are strongly encouraged as means to prevent money laundering. Appropriate policies and procedures should address the following guidelines, at a minimum:

- 1. For personal accounts:
  - a) The procurement of proper identification from the customer (e.g., driver’s license with photograph or U.S. passport or alien registration card together with a major credit card).
  - b) Consideration of a customer’s residence or place of business.
  - c) Consideration of the source of funds used to open the account.
  - d) Contact with a service bureau, if applicable, to determine whether a customer has been reported for undesirable situations (e.g., overdrawing funds, potentially conducting check kiting schemes, etc.)
- 2. For business accounts:

- a) Verification of the legal status of a business (e.g., sole proprietorship, partnership, etc.).
  - b) Verification of the name of the business with a reporting agency.
  - c) For foreign business accounts, proof that the business is registered in the country of origin (e.g., articles of incorporation).
  - d) For large commercial accounts, information relating to financial statements, the customer's principal line of business and the type of business operations performed (e.g., wholesale or retail), and a list of major suppliers and customers.
3. Determine whether the institution uses fictitious names for customers on the general ledger or other documents. If yes, verify that the institution maintains files containing the customers' real names and other identifying information, and ensure that the institution has knowledge of these customers' activities.
4. Determine if the institution has ongoing monitoring systems in place to identify suspicious transactions (e.g., structuring, concentration accounts, transactions inconsistent with the nature of a customer's stated business, or unusual wire activities).
- e) Examples of money laundering cases and the ways in which they can be detected, resolved and reported.
  - f) The different forms that money laundering can take (e.g., deposit accounts, wire transfers, loans, etc.).
  - g) Wire (fund) transfer activity.
  - h) Overall internal policies and procedures, including "Know your Customer."
2. Review the scope and frequency of training and education to determine the importance management places on those activities.
3. Determine, through interviews with the compliance officer and other operations personnel (e.g., tellers, platform officers, branch managers), whether personnel are sufficiently knowledgeable about the BSA and the institution's procedures to ensure compliance.
4. Review the training program to ascertain whether it includes personnel in all departments (e.g., lending, fiduciary, and international departments, discount brokerage, private banking, correspondent and specialized foreign exchange units, and cash control centers).
5. Conduct interviews to verify that personnel from the areas covered under the preceding procedure are knowledgeable regarding the BSA requirements, possible money laundering schemes, and the identification of suspicious or unusual activities.

### **Education and Training**

1. Review the institution's program for educating appropriate employees regarding the BSA and money laundering to determine if it includes the following:
- a) Reporting of large currency transactions and related exemptions.
  - b) Sale of monetary instruments.
  - c) Record retention requirements.
  - d) Reporting suspicious activity or alleged criminal conduct.

### **Exemptions**

1. Obtain and review the institution's list of exempt customers and any correspondence with the Internal Revenue Service or FinCEN regarding exemptions. Verify that the list is centralized in one location.
2. Ascertain that the exemption list includes the following information required by Section 103.22(f):
- Name of business.



- Local street address.
  - Type of business.
  - Taxpayer identification number.
  - Account number.
  - Reason for exemption.
  - Indication as to whether exemption is for deposits, withdrawals, or both.
  - Dollar limit for each exemption type (deposit or withdrawal or both).
3. Determine whether the institution conducts at least an annual review of currency transaction activity to support established limits.
  4. Determine if the institution has written documentation to support the established dollar limits.
  5. Determine if the exemptions appear commensurate with the customary conduct of the customer's business activity and frequency of large cash transactions. If the responses to the preceding three procedures are satisfactory, procedures 6 and 7 below may be omitted.
  6. Obtain customer statements of account for a sixty day period for all customers on the exemption list, and review to determine whether any daily deposit or withdrawal amounts (either individual amounts or aggregated amounts) exceed \$10,000. (The amounts on the statements of account may include cash or checks).
  7. Determine the method used by exempt customers to withdraw currency in excess of \$10,000. If checks payable to "cash" are used, review canceled checks cleared during the current statement cycle and identify those items and amounts. If counter currency withdrawal tickets or counter checks are used, review tickets or checks and identify those items and amounts. Determine whether the cash portion of the withdrawals is sufficient to qualify the customer for an exemption based upon Treasury's "regular and frequent" requirement for a withdrawal exemption. Determine whether established dollar limits are reasonable by reviewing the customer's cash withdrawal activity.

8. Determine whether the exemption list includes customers that do not immediately meet the exemption procedure's eligibility requirements and thereby require special exemptions (Section 103.22(d)). If so, determine whether written correspondence from the IRS or Treasury supports the special exemptions.
9. Determine whether the exemption list contains customers who cannot be exempted under the exemption procedures (Section 103.22(b,c)).

10. For customers on the exemption list after October 27, 1986, determine that the institution maintains a signed statement from the customer(s)

attesting to the accuracy of the information supporting the exemption(s) (Section 103.22(d)).

11. If the institution ships currency to, or receives currency from, a correspondent bank, savings association, credit union, etc., determine that the names and addresses of these institutions are included on the exemption list.
12. Determine that all accounts represented on the exemption list are of a commercial and not personal nature.
13. Determine, by discussing with appropriate personnel, whether any customers have asked to be placed on the exemption list. If so, review information relating to the account for suspicious activity.
14. Determine that the institution adheres to its established policy and regulatory requirements (Section 103.22(h)) in granting exemptions.

### **Currency Flows and Reporting of Large Cash Transactions**

1. Review a sample of cash totals shipped to and received from the Federal Reserve Bank, correspondent banks or between branch offices for a reasonable period of time (generally no less than three months) or, if available, the latest FinCEN Analysis of Federal Reserve Cash Flows, for unusual activity (e.g., material variance in totals of currency shipped or re-

- 
- ceived or large denomination currency exchanged).
2. Determine, through discussions with management, the cause of any unusual activity. Also determine if the volume of CTR filings during the period is consistent with any changes in the patterns of cash activity.
  3. Review a sample of completed CTRs, whether hard copy or from computer generated filings, to determine that (as specified in Section 103.22):
    - a) CTRs are properly completed in accordance with IRS instructions.
    - b) Transaction amounts are consistent with the type and nature of business or occupation of the customer.
    - c) CTRs are filed for large cash transactions identified by tellers' proof sheets, automated large currency transaction system, or other type of aggregation system, unless an exemption exists for the customer. If an exemption exists, determine that CTRs are filed for customers who exceed their exemption limits.
    - d) CTRs are filed within 15 calendar days after the date of the transaction (25 days if magnetically filed) (Section 103.27(a)(1)).
  4. If the institution has an automated system in place to capture individual or multiple cash transactions in excess of \$10,000 on the same business day by or on behalf of the same individual, or by account, determine whether:
    - a) the system is tested to verify that it is comprehensive regarding all points of cash entry and exit; and,
    - b) the aggregation system covers all applicable areas within the institution (e.g., discount brokerage, private banking, fiduciary, or any other departments in the institution that engage in currency transactions subject to the regulation.
  5. If the institution does not have an automated system in place, determine how the institution identifies reportable transactions.
  6. If the institution has an automated system in place to capture individual or multiple cash transactions of less than \$10,000, ascertain whether the system can detect:
    - a) Evidence of structured transactions;
    - b) "Concentration accounts" (accounts that have frequent cash deposits aggregating less than \$10,000 on any business day, and relatively few transfers of large amounts out of the accounts, by check or wire);
    - c) Customers with frequent cash transactions of less than \$10,000 who have not provided tax identification numbers; and
    - d) Customers with frequent cash transactions that have provided either a foreign address or post office box as an address or have requested that the institution hold monthly statements.
  7. Review a sample of the following reports, as available, for money laundering activities:
    - a) Suspected kiting reports. These reports identify excessive activity in accounts and should be reviewed for cash activity. The account profile of an account used for money laundering can be similar to that of an account used for check kiting in that it may have a high volume of activity, matching deposits and withdrawals, or low average balances in relation to activity.
    - b) Demand deposit activity reports. These reports cover all customer and employee accounts. They generally show daily balances and accumulated deposits and withdrawals over a 30 day period. Careful review will show accounts that have changed, either in average balance or in numbers of transactions.
    - c) Incoming and outgoing wire transfer logs. These logs can identify transfers of funds out of the country or to remote banks, transfers funded by cashier's checks or money orders in amounts under the \$10,000 CTR filing threshold, and
-

other suspicious patterns for noncustomers as well as account holders. Also review incoming and outgoing facsimile logs for payment instructions related to funds transfers.

- d) Loans listed by collateral. Review for “significant” loans collateralized by cash (certificates of deposit, bank accounts). Review situations in which collateral was received by funds transfer and the collateral is from offshore banks. Inquire about the purpose and terms of loans secured largely with cash and whether payments on those loans are often received in cash, if at all. Identify loans from which the proceeds are immediately used to purchase certificates of deposit.

#### **Sale or Purchase of Monetary Instruments Over \$3,000**

1. Determine that the institution’s records include the following information required by Section 103.29(a)(1) for purchasers who have deposit accounts with the institution:
  - a) The name of the purchaser.
  - b) Date of purchase.
  - c) The type(s) of instrument(s) purchased.
  - d) The serial number(s) of each of the instrument(s) purchased.
  - e) The dollar amount(s) of each of the instrument(s) purchased in currency.
  - f) Method of verifying identity, either at the time of purchase or when the deposit account is opened.
2. Determine that the institution’s records include the following information required by Section 103.29(a)(2) for purchasers who do not have deposit accounts with the institution:
  - a) The name and address of the purchaser.
  - b) The social security or alien identification number of the purchaser.
  - c) The date of birth of the purchaser.

- d) The date of purchase.
  - e) The type(s) of instrument(s) purchased.
  - f) The serial number(s) of each of the instrument(s) purchased.
  - g) The dollar amount(s) of each of the instrument(s) purchased.
  - h) Method of verifying identity of purchaser and specific identifying information (e.g., state of issuance and number of driver’s license).
3. Determine whether the institution’s records are retained for five years and retrievable, upon request from the Treasury, within a reasonable period of time (Section 103.29©).
  4. Determine whether the institution has a system for capturing same day, contemporaneous, or multiple sales of monetary instruments to one customer totaling \$3,000 or more, and review the adequacy of that system (Section 103.29(b)).
  5. If the institution uses manual systems to identify cash sales of monetary instruments, determine that the institution’s records are sufficiently detailed to identify the method of payment for all sales or purchases of monetary instruments.
  6. If the institution uses automated systems to identify cash sales of monetary instruments, determine that the institution’s audit or management review program tests the accuracy and validity of the identification system.

#### **Wire (Funds) Transfer**

1. Determine that an audit trail of wire transfer activities exists, and that adequate separation of duties or other compensating controls are in place to ensure proper authorization for sending and receiving transfers, and for correcting posting to accounts.
2. Verify that the institution files CTRs, when applicable, for noncustomers submitting cash for funds transfers (Section 103.22).

3. If the institution sends or receives fund transfers to/from financial institutions in other countries, especially those with strict privacy and secrecy laws, ensure that amounts, frequency and countries of origin or destination are consistent with the nature of the business or occupation of the customer.
4. Determine if the institution has procedures or other effective means to monitor accounts with frequent cash deposits and subsequent wire transfers of funds to a larger institution or out of the country.

#### **Responsibilities of Originating Institutions**

1. If the originator has an established relationship with the institution, determine, for each fund transfer origination of \$3,000 or more, whether the institution retains the following records with the payment order or in the institution's files (Section 103.33(e)(1)(i)):

(Note: A customer has an established relationship with a financial institution if the customer has a loan, deposit, or other asset account, or is a person with respect to which the institution has on file the person's name and address, as well as taxpayer ID number, or, if none, alien identification number or passport number and country of issuance, and to which the institution provides financial services relying on that information.)

- a) Name and address of the originator.
- b) Amount of the payment order.
- c) Date of the payment order.
- d) Any payment instructions.
- e) The identity of the beneficiary's bank.
- f) As many of the following items as are received with the payment order:
  - \* Name and address of the beneficiary.
  - \* Account number of the beneficiary.
  - \* Any other specific identifier of the beneficiary.

2. If the originator does not have an established relationship with the institution, determine, for each fund transfer origination of \$3,000 or more, whether the institution retains the following records:
  - a) For payment orders made in person, verification that the institution required identification and a record of the verified information.
  - b) When the institution has knowledge that the person placing the payment order is not the originator, a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.
  - c) When the payment order is not made in person, a record of the name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer.
3. Determine whether the information the institution must retain for originators is retrievable by reference to the name of the originator. When the originator is an established customer of the institution and has an account used for funds transfers, determine whether the information also is retrievable by account number (Section 103.33(e)(4)).
4. For transmittals of \$3,000 or more, determine whether the institution includes in the transmittal order (Section 103.33(g)(1)):
  - a) The name and, if the payment is ordered from an account, the account number of the transmitter.
  - b) The address of the transmitter, except for transmittal orders through Fedwire until

such time as the institution that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format.

- c) The amount of the transmittal order.
  - d) The date of the transmittal order.
  - e) The identity of the recipient's financial institution.
  - f) As many of the following items as are received with the transmittal order:
    - \* The name and address of the recipient
    - \* The account number of the recipient
    - \* Any other specific identifier of the recipient; and either the name and address or numeric identifier of the transmitter's financial institution.
5. Determine whether the institution is complying with the FFIEC's December 23, 1992 policy statement, which recommends that the text of every payment order include the name, address, and account number of the originator and beneficiary.

#### **Responsibilities of Intermediary Institutions**

1. For transmittals of funds of \$3,000 or more, determine whether the institution includes in the transmittal order to the next receiving financial institution the following, if received from the sender (Section 103.33(g)(2)):
  - a) The name and account number of the transmitter.
  - b) The address of the transmitter (except for transmittal orders through Fedwire until such time as the institution that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format).
  - c) The amount of the transmittal order.
  - d) The date of the transmittal order.

- e) The identity of the recipient's financial institution.
- f) As many of the following items as are received with the transmittal order:
  - \* The name and address of the recipient.
  - \* The account number of the recipient
  - \* Any other specific identifier of the recipient; and either the name and address or numeric identifier of the transmitter's financial institution.

#### **Responsibilities of Beneficiary Institutions**

1. For payment orders of \$3,000 or more received for a beneficiary that is not an established customer of the institution (Section 103.33(e)(3)):
  - a) If proceeds are delivered in person to the beneficiary or its representative or agent, determine that the institution verified the identity of the person receiving the proceeds and obtained and retained a record of that information.
  - b) If the institution has knowledge that the person receiving the proceeds is not the beneficiary, determine that the institution obtained and retained a record of the beneficiary's name and address, as well as the beneficiary's identification.
  - c) If the proceeds are delivered other than in person, determine that the institution retained a copy of the check or other instrument used to effect the payment, or the information contained thereon, as well as the name and address of the person to which it was sent.
2. Determine whether the information that the institution must retain for beneficiaries is retrievable by reference to the name of the beneficiary, and, if the beneficiary is an established customer of the institution and has an account used for fund transfers, whether the information also is retrievable by account number (Section 103.33(e)(4)).

**Payable Through Accounts**

1. Review the contracts/agreements with foreign banks, if applicable. Determine whether they:
  - a) Address procedures for opening sub-accounts.
  - b) Provide the U.S. institution with the ability to appropriately identify sub-account holders.
  - c) Prohibit cash transactions by sub-account holders within U.S. borders.
  - d) Require the foreign bank to monitor sub-account activities to detect, report, and investigate suspicious or unusual transactions and report findings to the U.S. institution.
  - e) Clearly state the liability of both the U.S. institution and the foreign bank to which the payable through accounts service is being offered.
2. Review the institution's system of internal controls for opening and monitoring payable through accounts and determine whether it provides for:
  - a) Procedures for opening accounts.
  - b) Operational procedures.
  - c) Staff responsibilities.
  - d) Training.
  - e) Audit.
  - f) Identifying and reporting of unusual or suspicious transactions.
3. Determine whether the institution's "Know Your Customer" policy is applied to payable through accounts.
4. Determine whether the institution prohibits foreign banks from opening sub-accounts (second tier) for other foreign banks, casas de cambio's, finance companies or other financial intermediaries. If they are permitted, determine the procedures used by the institution to understand the identity of the second tier sub-account holders and the nature of the business transactions.
5. Determine whether the institution periodically reviews the listing of account and sub-account holders to ensure that no accounts have been opened for individuals or businesses located in countries that are prohibited from doing business in the U.S. as determined by the Treasury's Office of Foreign Assets Control (see "Economic Sanctions," Handbook section 415).
6. Determine if the institution monitors account activity for unusual or suspicious transactions, and whether foreign banks that maintain the payable through relationship review and explain suspicious transactions
7. Determine whether the institution prohibits cash transactions by sub-account holders. If not, determine whether the institution properly completes CTRs for large cash transactions.
8. If possible, determine whether the home country supervisor of the foreign bank requires banks to identify and monitor the transactions of their customers consistent with U.S. requirements.
9. Determine whether the institution obtains adequate information about the ultimate users of the payable through accounts.
10. Determine whether the institution can ensure that its payable through accounts are not being used for money laundering or other illicit purposes, and if it cannot, determine whether the institution has taken steps to terminate account relationships as expeditiously as possible.
11. Determine whether the institution maintains adequate information (e.g., financial statements, licensing confirmation, etc.) regarding the foreign bank.

12. Evaluate the method (e.g., audit or other review) used by the institution to ascertain:
- a) The procedures of the foreign bank for opening accounts, to determine if they are consistent with U.S. requirements.
  - b) The foreign bank's monitoring of sub-account activities to detect and report suspicious or unusual transactions.

## Exhibit A

Form <b>4789</b> (Rev. June 1998) Department of the Treasury Internal Revenue Service	<b>Currency Transaction Report</b> ▶ Use this 1998 revision effective June 1, 1998. ▶ For Paperwork Reduction Act Notice, see page 3. ▶ Please type or print. (Complete all parts that apply—See instructions)	OMB No. 1506-0004
1 Check all box(es) that apply: a <input type="checkbox"/> Amends prior report    b <input type="checkbox"/> Multiple persons    c <input type="checkbox"/> Multiple transactions		
<b>Person(s) Involved in Transaction(s)</b>		
<b>Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted</b>		
2 Individual's last name or Organization's name		3 First name
		4 M.I.
5 Doing business as (DBA)		6 SSN or EIN
7 Address (number, street, and apt. or suite no.)		8 Date of birth
		M M D D Y Y Y Y
9 City	10 State	11 ZIP code
12 Country (if not U.S.)		13 Occupation, profession, or business
14 If an individual, describe method used to verify identity: a <input type="checkbox"/> Driver's license/State I.D.    b <input type="checkbox"/> Passport    c <input type="checkbox"/> Alien registration    d <input type="checkbox"/> Other _____ e Issued by: _____ f Number: _____		
<b>Section B—Individual(s) Conducting Transaction(s) (if other than above).</b> If Section B is left blank or incomplete, check the box(es) below to indicate the reason(s): a <input type="checkbox"/> Armored Car Service    b <input type="checkbox"/> Mail Deposit or Shipment    c <input type="checkbox"/> Night Deposit or Automated Teller Machine (ATM) d <input type="checkbox"/> Multiple Transactions    e <input type="checkbox"/> Conducted On Own Behalf		
15 Individual's last name		16 First name
		17 M.I.
18 Address (number, street, and apt. or suite no.)		19 SSN
20 City	21 State	22 ZIP code
23 Country (if not U.S.)		24 Date of birth
		M M D D Y Y Y Y
25 If an individual, describe method used to verify identity: a <input type="checkbox"/> Driver's license/State I.D.    b <input type="checkbox"/> Passport    c <input type="checkbox"/> Alien registration    d <input type="checkbox"/> Other _____ e Issued by: _____ f Number: _____		
<b>Amount and Type of Transaction(s). Check all boxes that apply.</b>		
26 Cash In \$ _____ .00		27 Cash Out \$ _____ .00
		28 Date of Transaction
		M M D D Y Y Y Y
29 <input type="checkbox"/> Foreign Currency _____ (Country)	30 <input type="checkbox"/> Wire Transfer(s)	31 <input type="checkbox"/> Negotiable Instrument(s) Purchased
32 <input type="checkbox"/> Negotiable Instrument(s) Cashed	33 <input type="checkbox"/> Currency Exchange(s)	34 <input type="checkbox"/> Deposit(s)/Withdrawal(s)
35 <input type="checkbox"/> Account Number(s) Affected (if any): _____	36 <input type="checkbox"/> Other (specify) _____	
<b>Financial Institution Where Transaction(s) Takes Place</b>		
37 Name of financial institution		Enter Federal Regulator or BSA Examiner code number from the instructions here. ▶ [ ]
38 Address (number, street, and apt. or suite no.)		39 SSN or EIN
40 City	41 State	42 ZIP code
43 MICR No.		
44 Title of approving official		45 Signature of approving official
46 Date of signature		47 Type or print preparer's name
M M D D Y Y Y Y		
48 Type or print name of person to contact		49 Telephone number
		( )

Cat. No. 42004W

Form **4789** (Rev. 6-98)



Form 4789 (Rev. 6-98)

Page 2

**Multiple Persons**

(Complete applicable parts below if box 1b on page 1 is checked.)

**Person(s) Involved in Transaction(s)****Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted**

2 Individual's last name or Organization's name			3 First name			4 M.I.		
5 Doing business as (DBA)						6 SSN or EIN		
7 Address (number, street, and apt. or suite no.)						8 Date of birth		
9 City		10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business		
14 If an individual, describe method used to verify identity:								
a <input type="checkbox"/> Driver's license/State I.D.			b <input type="checkbox"/> Passport		c <input type="checkbox"/> Alien registration		d <input type="checkbox"/> Other	
e Issued by:			f Number:					

**Section B—Individual(s) Conducting Transaction(s) (if other than above).**

15 Individual's last name			16 First name			17 M.I.		
18 Address (number, street, and apt. or suite no.)						19 SSN		
20 City		21 State	22 ZIP code	23 Country (if not U.S.)		24 Date of birth		
25 If an individual, describe method used to verify identity:								
a <input type="checkbox"/> Driver's license/State I.D.			b <input type="checkbox"/> Passport		c <input type="checkbox"/> Alien registration		d <input type="checkbox"/> Other	
e Issued by:			f Number:					

**Person(s) Involved in Transaction(s)****Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted**

2 Individual's last name or Organization's name			3 First name			4 M.I.		
5 Doing business as (DBA)						6 SSN or EIN		
7 Address (number, street, and apt. or suite no.)						8 Date of birth		
9 City		10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business		
14 If an individual, describe method used to verify identity:								
a <input type="checkbox"/> Driver's license/State I.D.			b <input type="checkbox"/> Passport		c <input type="checkbox"/> Alien registration		d <input type="checkbox"/> Other	
e Issued by:			f Number:					

**Section B—Individual(s) Conducting Transaction(s) (if other than above).**

15 Individual's last name			16 First name			17 M.I.		
18 Address (number, street, and apt. or suite no.)						19 SSN		
20 City		21 State	22 ZIP code	23 Country (if not U.S.)		24 Date of birth		
25 If an individual, describe method used to verify identity:								
a <input type="checkbox"/> Driver's license/State I.D.			b <input type="checkbox"/> Passport		c <input type="checkbox"/> Alien registration		d <input type="checkbox"/> Other	
e Issued by:			f Number:					

**Paperwork Reduction Act Notice.**—The requested information is useful in criminal, tax, and regulatory investigations and proceedings. Financial institutions are required to provide the information under 31 U.S.C. 5313 and 31 CFR Part 103, commonly referred to as the Bank Secrecy Act (BSA). The BSA is administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). You are not required to provide the requested information unless a form displays a valid OMB control number.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 19 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, you may write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send this form to this office. Instead, see **When and Where To File** below.

### Suspicious Transactions

This Currency Transaction Report (CTR) should NOT be filed for suspicious transactions involving \$10,000 or less in currency OR to note that a transaction of more than \$10,000 is suspicious. Any suspicious or unusual activity should be reported by a financial institution in the manner prescribed by its appropriate federal regulator or BSA examiner. (See the instructions for Item 37.) If a transaction is suspicious and in excess of \$10,000 in currency, then both a CTR and the appropriate referral form must be filed.

Should the suspicious activity require immediate attention, financial institutions should telephone 1-800-800-CTRS. An Internal Revenue Service (IRS) employee will direct the call to the local office of the IRS Criminal Investigation Division (CID). This toll-free number is operational Monday through Friday, from approximately 9:00 am to 6:00 pm Eastern Standard Time. If an emergency, consult directory assistance for the local IRS CID Office.

### General Instructions

**Who Must File.**—Each financial institution (other than a casino, which instead must file Form 8362 and the U.S. Postal Service for which there are separate rules), must file Form 4789 (CTR) for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that (1) they are by or on behalf of the same person, and (2) they result in either currency received (Cash In) or currency disbursed (Cash Out) by the financial institution totaling more than \$10,000 during any one business day. For a bank, a business day is the day on which transactions are routinely posted to customers' accounts, as normally communicated to depository customers. For all other financial institutions, a business day is a calendar day.

Generally, financial institutions are defined as banks, other types of depository institutions, brokers or dealers in securities, money transmitters, currency exchangers, check cashers, issuers and sellers of money orders and traveler's checks. Should you have questions, see the definitions in 31 CFR Part 103.

**When and Where To File.**—File this CTR by the 15th calendar day after the day of the transaction with the IRS Detroit Computing Center, ATTN: CTR, P.O. Box 33604, Detroit, MI 48232-5604 or with your local IRS office. Keep a

copy of each CTR for five years from the date filed.

A financial institution may apply to file the CTRs magnetically. To obtain an application to file magnetically, write to the IRS Detroit Computing Center, ATTN: CTR Magnetic Media Coordinator, at the address listed above.

**Identification Requirements.**—All individuals (except employees of armored car services) conducting a reportable transaction(s) for themselves or for another person must be identified by means of an official document(s).

Acceptable forms of identification include a driver's license, military, and military/dependent identification cards, passport, state issued identification card, cedular card (foreign), non-resident alien identification cards, or any other identification document or documents, which contain name and preferably address and a photograph and are normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers.

Acceptable identification information obtained previously and maintained in the financial institution's records may be used. For example, if documents verifying an individual's identity were examined and recorded on a signature card when an account was opened, the financial institution may rely on that information. In completing the CTR, the financial institution must indicate on the form the method, type, and number of the identification. Statements such as "known customer" or "signature card on file" are not sufficient for form completion.

**Penalties.**—Civil and criminal penalties are provided for failure to file a CTR or to supply information or for filing a false or fraudulent CTR. See 31 U.S.C. 5321, 5322 and 5324.

**For purposes of this CTR, the terms below have the following meanings:**

**Currency.**—The coin and paper money of the United States or any other country, which is circulated and customarily used and accepted as money.

**Person.**—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group.

**Organization.**—Person other than an individual.

**Transaction in Currency.**—The physical transfer of currency from one person to another. This does not include a transfer of funds by means of bank check, bank draft, wire transfer or other written order that does not involve the physical transfer of currency.

**Negotiable Instruments.**—All checks and drafts (including business, personal, bank, cashier's and third-party), money orders, and promissory notes. For purposes of this CTR, all traveler's checks shall also be considered negotiable instruments. All such instruments shall be considered negotiable instruments whether or not they are in bearer form.

### Specific Instructions

Because of the limited space on the front and back of the CTR, it may be necessary to submit additional information on attached sheets. Submit this additional information on plain paper attached to the CTR. Be sure to put the individual's or organization's name and identifying number (items 2, 3, 4, and 6 of the CTR) on any additional sheets so that if it becomes separated, it may be associated with the CTR.

**Item 1a. Amends Prior Report.**—If this CTR is being filed because it amends a report filed

previously, check Item 1a. Staple a copy of the original CTR to the amended one, complete Part III fully and only those other entries which are being amended.

**Item 1b. Multiple Persons.**—If this transaction is being conducted by more than one person or on behalf of more than one person, check Item 1b. Enter information in Part I for one of the persons and provide information on any other persons on the back of the CTR.

**Item 1c. Multiple Transactions.**—If the financial institution has knowledge that there are multiple transactions, check Item 1c.

### PART I - Person(s) Involved in Transaction(s)

Section A must be completed. If an individual conducts a transaction on his own behalf, complete Section A; leave Section B BLANK. If an individual conducts a transaction on his own behalf and on behalf of another person(s), complete Section A for each person; leave Section B BLANK. If an individual conducts a transaction on behalf of another person(s), complete Section B for the individual conducting the transaction, and complete Section A for each person on whose behalf the transaction is conducted of whom the financial institution has knowledge.

**Section A. Person(s) on Whose Behalf Transaction(s) Is Conducted.**—See instructions above.

**Items 2, 3, and 4. Individual/Organization Name.**—If the person on whose behalf the transaction(s) is conducted is an individual, put his/her last name in Item 2, first name in Item 3 and middle initial in Item 4. If there is no middle initial, leave item 4 BLANK. If the transaction is conducted on behalf of an organization, put its name in Item 2 and leave Items 3 and 4 BLANK.

**Item 5. Doing Business As (DBA).**—If the financial institution has knowledge of a separate "doing business as" name, enter it in Item 5. For example, Johnson Enterprises DBA PJ's Pizzeria.

**Item 6. Social Security Number (SSN) or Employer Identification Number (EIN).**—Enter the SSN or EIN of the person identified in Item 2. If none, write NONE.

**Items 7, 9, 10, 11 and 12. Address.**—Enter the permanent street address including zip code of the person identified in Item 2. Use the Post Office's two letter state abbreviation code. A P.O. Box should not be used by itself and may only be used if there is no street address. If a P.O. Box is used, the name of the apartment or suite number, road or route number where the person resides must also be provided. If the address is outside the U.S., provide the street address, city, province, or state, postal code (if known), and the name of the country.

**Item 8. Date of Birth.**—Enter the date of birth. Eight numerals must be inserted for each date. The first two will reflect the month of birth, the second two the calendar day of birth, and the last four numerals the year of birth. Zero (0) should precede any single digit number. For example, if an individual's birth date is April 3, 1948, Item 8 should read 04 03 1948.

**Item 13. Occupation, Profession, or Business.**—Identify fully the occupation, profession or business of the person on whose behalf the transaction(s) was conducted. For example, secretary, shoe salesman, carpenter, attorney, housewife, restaurant, liquor store, etc. Do not use non-specific terms such as merchant, self-employed, businessman, etc.

**Item 14. If an Individual, Describe Method Used To Verify.**—If an individual conducts the transaction(s) on his/her own behalf, his/her identity must be verified by examination of an acceptable document (see **General Instructions**). For example, check box **a** if a driver's license is used to verify an individual's identity, and enter the state that issued the license and the number in items **e** and **f**. If the transaction is conducted by an individual on behalf of another individual not present or an organization, enter **N/A** in item 14.

**Section B. Individual(s) Conducting Transaction(s)** (if other than above).—Financial institutions should enter as much information as is available. However, there may be instances in which items 15-25 may be left **BLANK** or incomplete.

If items 15-25 are left **BLANK** or incomplete, check one or more of the boxes provided to indicate the reason(s).

**Example:** If there are multiple transactions that, if only when aggregated, the financial institution has knowledge the transactions exceed the reporting threshold, and therefore, did not identify the transaction(s), check box **d** for Multiple Transactions.

**Items 15, 16, and 17. Individual(s) Name.**—Complete these items if an individual conducts a transaction(s) on behalf of another person. For example, if John Doe, an employee of XYZ Grocery Store makes a deposit to the store's account, XYZ Grocery Store should be identified in Section A, and John Doe should be identified in Section B.

**Items 18, 20, 21, 22, and 23. Address.**—Enter the permanent street address including zip code of the individual. (See the instructions for items 7, 9, 10, 11, and 12.)

**Item 19. SSN.**—If the individual has an SSN, enter it in item 19. If the individual does not have an SSN, enter **NONE**.

**Item 24. Date of Birth.**—Enter the individual's date of birth. See the instructions for item 8.

**Item 25. If an Individual, Describe Method Used To Verify.**—Enter the method by which the individual's identity is verified (see **General Instructions** and item 14).

## PART II - Amount and Type of Transaction(s)

Complete Part II to identify the type of transaction(s) reported and the amount(s) involved.

**Items 26 and 27. Cash In/Cash Out.**—In the spaces provided, enter the amount of currency received (Cash In) or disbursed (Cash Out) by the financial institution. If foreign currency is exchanged, use the U.S. dollar equivalent on the day of the transaction.

If less than a full dollar amount is involved, increase that figure to the next highest dollar. For example, if the currency totals \$20,000.05, show the total as \$20,001.00.

**Item 28. Date of Transaction.**—Eight numerals must be inserted for each date. (See the instructions for item 8.)

## Determining Whether Transactions Meet the Reporting Threshold

Only cash transactions that, if alone or when aggregated, exceed \$10,000 should be reported on the CTR. Transactions shall not be offset against one another.

If there are both Cash In and Cash Out transactions that are reportable, the amounts should be considered separately and not aggregated. However, they may be reported on a single CTR.

If there is a currency exchange, it should be aggregated separately with each of the Cash In and Cash Out totals.

**Example 1:** A person deposits \$11,000 in currency to his savings account and withdraws \$3,000 in currency from his checking account.

The CTR should be completed as follows: Cash In \$11,000 and no entry for Cash Out. This is because the \$3,000 transaction does not meet the reporting threshold.

**Example 2:** A person deposits \$11,000 in currency to his savings account and withdraws \$12,000 in currency from his checking account.

The CTR should be completed as follows: Cash In \$11,000, Cash Out \$12,000. This is because there are two reportable transactions. However, one CTR may be filed to reflect both.

**Example 3:** A person deposits \$6,000 in currency to his savings account and withdraws \$4,000 in currency from his checking account. Further, he presents \$5,000 in currency to be exchanged for the equivalent in French francs.

The CTR should be completed as follows: Cash In \$11,000 and no entry for Cash Out. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and the Cash Out amounts. The result is a reportable \$11,000 Cash In transaction. The total Cash Out amount is \$9,000 which does not meet the reporting threshold; therefore, it is not entered on the CTR.

**Example 4:** A person deposits \$6,000 in currency to his savings account and withdraws \$7,000 in currency from his checking account. Further, he presents \$5,000 in currency to be exchanged for the equivalent in French francs.

The CTR should be completed as follows: Cash In \$11,000, Cash Out \$12,000. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and Cash Out amounts. In this example, each of the Cash In and Cash Out totals exceed \$10,000 and must be reflected on the CTR.

**Item 29. Foreign Currency.**—If foreign currency is involved, check item 29 and identify the country. If multiple foreign currencies are involved, identify the country for which the largest amount is exchanged.

**Items 30-33.**—Check the appropriate item(s) to identify the following type of transaction(s):

30. Wire Transfer(s)

31. Negotiable Instrument(s) Purchased

32. Negotiable Instrument(s) Cashed

33. Currency Exchange(s)

**Item 34. Deposits/Withdrawals.**—Check this item to identify deposits to or withdrawals from accounts, e.g., demand deposit accounts, savings accounts, time deposits, mutual fund accounts or any other account held at the financial institution. Enter the account number(s) in item 35.

**Item 35. Account Numbers Affected (if any).**—Enter the account numbers of any accounts affected by the transaction(s) that are maintained

at the financial institution conducting the transaction(s). If necessary, use additional sheets of paper to indicate all of the affected accounts.

**Example 1:** If a person cashes a check drawn on an account held at the financial institution, the CTR should be completed as follows: indicate Negotiable Instrument(s) Cashed and provide the account number of the check.

If the transaction does not affect an account, make no entry.

**Example 2:** A person cashes a check drawn on another financial institution. In this instance, Negotiable Instrument(s) Cashed would be indicated, but no account at the financial institution has been affected. Therefore, item 35 should be left **BLANK**.

**Item 36. Other (specify).**—If a transaction is not identified in items 30-34, check item 36 and provide an additional description. For example, a person presents a check to purchase "foreign currency".

## Part III - Financial Institution Where Transaction(s) Takes Place

**Item 37. Name of Financial Institution and Identity of Federal Regulator or BSA Examiner.**—Enter the financial institution's full legal name and identify the federal regulator or BSA examiner, using the following codes:

FEDERAL REGULATOR OR BSA EXAMINER	CODE
Comptroller of the Currency (OCC)	1
Federal Deposit Insurance Corporation (FDIC)	2
Federal Reserve System (FRS)	3
Office of Thrift Supervision (OTS)	4
National Credit Union Administration (NCUA)	5
Securities and Exchange Commission (SEC)	6
Internal Revenue Service (IRS)	7
U.S. Postal Service (USPS)	8

**Items 38, 40, 41, and 42. Address.**—Enter the street address, city, state, and ZIP code of the financial institution where the transaction occurred. If there are multiple transactions, provide information on the office or branch where any one of the transactions has occurred.

**Item 39. EIN or SSN.**—Enter the financial institution's EIN. If the financial institution does not have an EIN, enter the SSN of the financial institution's principal owner.

**Item 43. MICR Number.**—If a depository institution, enter the Magnetic Ink Character Recognition (MICR) number.

## Signature

**Items 44 and 45. Title and Signature of Approving Official.**—The official who reviews and approves the CTR must indicate his/her title and sign the CTR.

**Item 46. Date the Form Was Signed.**—The approving official must enter the date the CTR is signed. (See the instructions for item 8.)

**Item 47. Preparer's Name.**—Type or print the full name of the individual preparing the CTR. The preparer and the approving official may not necessarily be the same individual.

**Items 48 and 49. Contact Person/Telephone Number.**—Type or print the name and telephone number of an individual to contact concerning questions about the CTR.



## Exhibit B

<b>TD F 90-22.53</b> Treasury form (January 1999)	<h1 style="margin: 0;">Designation of Exempt Person</h1> <p style="margin: 5px 0;">Please type or print</p>	 OMB No. 1506-0012
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>1 Check appropriate box (see instructions):</p> <p>a <input type="checkbox"/> Initial Designation      b <input type="checkbox"/> Biennial Renewal</p> </div> <div style="width: 48%;"> <p>2 Check appropriate box:</p> <p>a <input type="checkbox"/> Exemption Amended      b <input type="checkbox"/> Exemption Revoked</p> </div> </div>		
<b>Part I Exempt Person</b>		
3 Business Name or Name of Sole Proprietor		4 Doing Business As (DBA)
5 Address (Number, Street, and Apt. or Suite No.)		
6 City	7 State	8 Zip/Postal Code
9 Taxpayer Identification Number		
<b>Part II Basis for Exemption</b>		
10 Exemption Basis		
<p>a <input type="checkbox"/> Bank      b <input type="checkbox"/> Government Agency / Governmental Authority      c <input type="checkbox"/> Listed company      d <input type="checkbox"/> Listed Company Subsidiary</p> <p>e <input type="checkbox"/> Eligible Non-listed business      f <input type="checkbox"/> Payroll Customer</p>		
11 Effective date of the exemption		12 Has there been a change in control of the exempt person? For 10(e) and (f) only.
M M D D Y Y Y Y		a <input type="checkbox"/> Yes      b <input type="checkbox"/> No
<b>Part III Bank Granting or Revoking Exemption</b>		
13 Name of Bank		14 Primary Federal Regulator (check only one)
		a <input type="checkbox"/> OCC      b <input type="checkbox"/> FDIC      c <input type="checkbox"/> FRS      d <input type="checkbox"/> OTS      e <input type="checkbox"/> NCUA
15 Address (Number, Street, and Apt. or Suite No.)		
16 City	17 State	18 Zip/Postal Code
19 Taxpayer Identification Number		
<b>Sign Here</b>	20 Title of approving official	21 Signature of approving official
	22 Date of Signature	
	M M D D Y Y Y Y	
23 Last name of person to contact	24 First name of person to contact	25 Telephone number
( ) -		
26 For Biennial Updates ONLY (see item 1(b))		
I certify on behalf of the above listed bank that its system of monitoring the transactions in currency of an exempt person for suspicious activity has been applied as necessary, and at least annually, to the account of this exempt person.		
<b>Sign Here</b>	Signature of Approving Official _____	
This form must be used by a bank or other depository institution to designate an eligible customer as an exempt person from currency transaction reporting rules of the Department of the Treasury (31 CFR 103.22). File this form with:		
U.S. Department of the Treasury, P.O. Box 33112, Detroit, MI 48232-0112.		
Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for banks and depository institutions to exempt eligible customers from currency transaction reporting. This report is required by law, pursuant to 31 CFR 103.22. Federal law enforcement and regulatory agencies, including the U.S. Department of the Treasury and other authorized authorities may use and share the information. You are not required to provide the requested information unless a form displays a valid OMB control number. Public reporting and recordkeeping burden for this form is estimated to average 70 minutes per response, and includes time to gather and maintain information to be required, review the instructions, and complete the information collection. The record retention period is five years. Send comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing the burden, to the Financial Crimes Enforcement Network, Attn: Paperwork Reduction Act, Suite 200, 2070 Chain Bridge Road, Vienna VA 22182-5336.		

## INSTRUCTIONS

## General Instructions

**Who Must File this Report:** Any bank (see definition) that wishes to designate a customer as an exempt person for purposes of CTR reporting must file this report. 31 CFR 103.22(d)(3)(i)

In addition, banks must file this form for the biennial renewal of the exempt person designation of eligible non-listed businesses and payroll customers. 31 CFR 103.22(d)(5)

A bank may, but is not required to, use this form to notify the Treasury that the bank has revoked the designation of a customer as an exempt person.

For further information, please refer to Title 31 of the Code of Federal Regulations, Part 103. See 31 CFR 103.11 for many definitions, and 31 CFR 103.22(d) for information on exemptions to CTR reporting.

**When and Where to File** - This report must be filed with the U.S. Department of the Treasury: Designation at P.O. Box 33112, Detroit MI 48232-0112. The report must be filed no later than 30 days after the first transaction to be exempted.

**Biennial Renewal (for eligible non-listed businesses and payroll customers only):** The report must be filed by March 15 of the second calendar year following the year in which the initial designation is made, and by every other March 15 thereafter.

## General Definitions

**Bank:** A domestic bank, savings association, thrift institution, or credit union. See 31 CFR 103.11(c). These may be exempted only to the extent of their domestic (i.e. US) operations.

**Biennial Renewal:** As provided for by 31 CFR 103.22(d)(5)(ii), the exemption status of all eligible non-listed businesses or payroll customers (see Item 10 e and f) must be updated once every two years, by March 15. This update is a biennial renewal of the exemption for these customers.

**Government Agency / Governmental Authority:** A department or agency of the United States, a State, or a political subdivision of a State, or (2) an entity established under the laws of the United States, of any State, or political subdivision of a State, or under interstate compact between 2 or more States, exercising governmental authority (i.e. the power to tax, police powers, or the power of eminent domain).

**Listed Company:** A business, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System - National Market System.

See 31 CFR 103.22(d)(2) for the extent to which listed companies that are financial institutions may be exempted.

**Listed Company Subsidiary:** A subsidiary, other than a bank, which is owned at least 51%, and is controlled, by a Listed Company.

See 31 CFR 103.22(d)(2) for the extent to which listed companies' subsidiaries that are financial institutions may be exempted.

**Eligible Non-Listed business:** A business which (1) has had a transaction account at the bank for at least 12 months; (2) frequently engages in currency transactions greater than \$10,000; (3) is incorporated, or organized under the laws of the United States or a State, or is registered as and eligible to do business in the United States; and (4) is not an ineligible business.

Eligible non-listed businesses may be exempted only to the extent of their domestic (i.e. US) operations.

**Payroll Customers:** A business which (1) has had a transaction account at the bank for at least 12 months; (2) frequently withdraws more than \$10,000 in currency for payroll purposes in order to pay its employees in the US; (3) is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business in the United States.

**Ineligible Businesses:** A business engaged primarily in one or more of the following activities: serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed pari-mutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN.

A business that engages in multiple business activities is not an ineligible business as long as no more than 50% of its gross revenues is derived from one or more ineligible business activities.

**United States:** The States of the United States, the District of Columbia, the Indian lands (as defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

## EXPLANATIONS FOR SPECIFIC ITEMS


**Item 3 - Business Name or Last Name of Sole Proprietor:** List the full legal name of the business being exempted, or the complete last name of the person being exempted.

**Item 9 - Taxpayer Identification Number:** Generally, the Employer Identification Number of the Exempt Person.

**Item 14 - Primary Federal Regulator:**  
OCC = Office of the Comptroller of the Currency; OTS = Office of Thrift Supervision; FRS = Federal Reserve System; FDIC = Federal Deposit Insurance Corporation; NCUA = National Credit Union Administration.

**Item 23, 24, 25 - Contact:** The last and first name, and the telephone number of the person within the depository institution to be contacted for questions regarding this report.

## Exhibit C

<b>(U.S. Customs Use Only)</b> Control No. _____ <small>31 U.S.C. 5316; 31 CFR 103.23 and 103.25</small> <b>▶ Please type or print.</b>		 DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE <b>REPORT OF INTERNATIONAL          TRANSPORTATION OF CURRENCY          OR MONETARY INSTRUMENTS</b>		<small>Form Approved          OMB No. 1515-0079</small> <b>▶ This form is to be filed with the          United States Customs Service</b> <b>▶ For Paperwork Reduction Act          Notice and Privacy Act Notice,          see back of form.</b>	
<b>FOR INDIVIDUAL DEPARTING FROM OR ENTERING THE UNITED STATES</b>					
1. NAME (Last or family, first, and middle)		2. IDENTIFYING NO. (See instructions)		3. DATE OF BIRTH (Mo./Day/Yr.)	
4. PERMANENT ADDRESS IN UNITED STATES OR ABROAD				5. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
6. ADDRESS WHILE IN THE UNITED STATES				7. PASSPORT NO. & COUNTRY	
8. U.S. VISA DATE		9. PLACE UNITED STATES VISA WAS ISSUED		10. IMMIGRATION ALIEN NO. (If any)	
11. CURRENCY OR MONETARY INSTRUMENT WAS: (Complete 11A or 11B)					
A. EXPORTED			B. IMPORTED		
Departed From: (City in U.S.)		Arrived At: (Foreign City/Country)		From: (Foreign City/Country)	
				At: (City in U.S.)	
<b>FOR PERSON SHIPPING, MAILING, OR RECEIVING CURRENCY OR MONETARY INSTRUMENTS</b>					
12. NAME (Last or family, first, and middle)		13. IDENTIFYING NO. (See instructions)		14. DATE OF BIRTH (Mo./Day/Yr.)	
15. PERMANENT ADDRESS IN UNITED STATES OR ABROAD				16. OF WHAT COUNTRY ARE YOU A CITIZEN/SUBJECT?	
17. ADDRESS WHILE IN THE UNITED STATES				18. PASSPORT NO. & COUNTRY	
19. U.S. VISA DATE		20. PLACE UNITED STATES VISA WAS ISSUED		21. IMMIGRATION ALIEN NO. (If any)	
22. CURRENCY OR MONETARY INSTRUMENTS		23. CURRENCY OR MONETARY INSTRUMENTS		24. IF THE CURRENCY OR MONETARY INSTRUMENT WAS MAILED, SHIPPED, OR TRANSPORTED COMPLETE BLOCKS A AND B.	
DATE SHIPPED		<input type="checkbox"/> Shipped To ▶		A. Method of Shipment (Auto, U.S. Mail, Public Carrier, etc.)	
DATE RECEIVED		<input type="checkbox"/> Received From ▶		B. Name of Transporter/Carrier	
<b>CURRENCY AND MONETARY INSTRUMENT INFORMATION (SEE INSTRUCTIONS ON REVERSE) (To be completed by everyone)</b>					
25. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS			Value in U.S. Dollars		26. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS A AND B. (SEE SPECIAL INSTRUCTIONS)
Coins <input type="checkbox"/> A. ▶ \$					A. Currency Name
Currency <input type="checkbox"/> B. ▶					B. Country
Other Instruments (Specify Type) <input type="checkbox"/> C. ▶					
(Add lines A, B and C) TOTAL AMOUNT ▶ \$					
<b>GENERAL - TO BE COMPLETED BY ALL TRAVELERS, SHIPPERS, AND RECIPIENTS</b>					
27. WERE YOU ACTING AS AN AGENT, ATTORNEY OR IN CAPACITY FOR ANYONE IN THIS CURRENCY OR MONETARY INSTRUMENT ACTIVITY? (If "Yes" complete A, B and C) <input type="checkbox"/> Yes <input type="checkbox"/> No					
PERSON IN WHOSE BEHALF YOU ARE ACTING ▶		A. Name		B. Address	
				C. Business activity, occupation, or profession	
Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.					
28. NAME AND TITLE		29. SIGNATURE		30. DATE	

(Replaces IRS Form 4790 which is obsolete.)

Customs Form 4790 (031695)

**GENERAL INSTRUCTIONS**

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

**Who Must File.** --Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$10,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States.

**A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS IS NOT REQUIRED TO BE REPORTED.**

**Exceptions.** --The following persons are not required to file reports: (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (8) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

**WHEN AND WHERE TO FILE:**

**A. Recipients.** --Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

**B. Shippers or Mailers:** --If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

**C. Travelers.** --Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or the monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

**PENALTIES.** --Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See section 103.47, 103.48 and 103.49 of the regulations.

**DEFINITIONS:**

**Bank.** --Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any state or of the United States; (2) a private bank; (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any state or of the United States; and (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

**Foreign Bank.** --A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

**Broker or Dealer in Securities.** --A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**IDENTIFICATION NUMBER.** --Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

**Investment Security.** --An instrument which: (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any areas in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

**Monetary Instruments.** --Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or other in such form that title thereto passes upon delivery. The term includes bank checks, travelers' checks and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

**Person.** --An individual, a corporation, a partnership, a trust or estate, a joint stock company, and association, a syndicate, joint venture or other unincorporated organization or group, and all entities cognizable as legal personalities.

**SPECIAL INSTRUCTIONS:**

You should complete each line which applies to you. **Part II.** --Line 22, enter the exact date you shipped or received currency or monetary instrument(s). Line 23, check the applicable box and give the complete name and address of the shipper or recipient. **Part III.** --Line 26, if currency or monetary instruments of more than one country is involved, attach a schedule showing each kind, country, and amount.

**PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE**

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public Law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency.


Disclosure of this information is mandatory. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 CFR 103.25. The social security number will be used as a means to identify the individual who files the record.

The collection of this information is mandatory pursuant to 31 U.S.C. 5316.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington DC 20229. **DO NOT send completed form(s) to this office.**

## Exhibit D

Department of the Treasury <b>TD F 90-22.1</b> SUPERSEDES ALL PREVIOUS EDITIONS		<b>REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS</b> Do <b>NOT</b> file with your Federal Tax Return		 OMB No. 1505-0063	
1 Filing for Calendar Year Y. Y. Y. Y.		2 Type of Filer a <input type="checkbox"/> Individual b <input type="checkbox"/> Partnership c <input type="checkbox"/> Corporation d <input type="checkbox"/> Fiduciary		3 Taxpayer Identification Number	
<b>Filer Information</b>					
4 Last Name or Organization Name		5 First Name		6 Middle Initial	
7 Address (Number, Street, and Apt. or Suite No.)				8 Date of Birth M M D D Y. Y. Y. Y.	
9 City	10 State	11 Zip/Postal Code	12 Country	13 Title (Not necessary if reporting a personal account)	
14 Are these account jointly owned? a <input type="checkbox"/> Yes b <input type="checkbox"/> No		15 Number of joint owners	16 Taxpayer Identification Number of joint owner (if known)		
17 Last Name or Organization Name		18 First Name		19 Middle Initial	
<b>Information on Financial Accounts</b>					
20 Number of Foreign Financial Accounts in which a financial interest is held		21 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other			
22 Maximum value of account a <input type="checkbox"/> Under \$10,000 c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999 d <input type="checkbox"/> Over \$1,000,000		23 Account Number or other designation			
24 Name of Financial Institution with which account is held		25 Country in which account is held			
26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If no, complete boxes 27-35.		27 Last Name or Organization Name of Account Owner			
28 First Name		29 Middle Initial		30 Taxpayer Identification Number	
31 Address (Number, Street, and Apt. or Suite No.)				32 City	
33 State	34 Zip/Postal Code	35 Country			
36 Signature				37 Date M M D D Y. Y. Y. Y.	

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. **SEE INSTRUCTIONS FOR DEFINITION** File this form with:  
**U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.**

**PRIVACY ACT NOTIFICATION**

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 552a(e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding.

Disclosure of this information is mandatory. Civil and criminal penalties, including certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report.

Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 103. The Social Security number will be used as a means to identify the individual who files the report.



Form TD F 90-22.1			
This side can be copied as many times as necessary in order to provide information on all accounts.			
1 Filing for Calendar Year Y . Y . Y . Y .		3 Taxpayer Identification Number 	
4 Filer Last Name or Business Name 		Page Number         OF	
2 Type of Filer a <input type="checkbox"/> Individual c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership d <input type="checkbox"/> Fiduciary		21 Type of Account a <input type="checkbox"/> Bank c <input type="checkbox"/> Other b <input type="checkbox"/> Securities	
22 Maximum Value of Account a <input type="checkbox"/> Under \$10,000 c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999 d <input type="checkbox"/> Over \$1,000,000		23 Account Number or other designation 	
24 Name of Financial Institution with which account is held 		25 Country in which account is held 	
26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If no, complete boxes 27-35.		27 Last Name or Organization Name of Account Owner 	
28 First Name 		29 Middle Initial 	
30 Taxpayer Identification Number 		31 Address (Number, Street, and Apt. or Suite No.) 	
32 City 		33 State 	
34 Zip/Postal Code 		35 Country 	

2 Type of Filer a <input type="checkbox"/> Individual c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership d <input type="checkbox"/> Fiduciary		21 Type of Account a <input type="checkbox"/> Bank c <input type="checkbox"/> Other b <input type="checkbox"/> Securities	
22 Maximum Value of Account a <input type="checkbox"/> Under \$10,000 c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999 d <input type="checkbox"/> Over \$1,000,000		23 Account Number or other designation 	
24 Name of Financial Institution with which account is held 		25 Country in which account is held 	
26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If no, complete boxes 27-35.		27 Last Name or Organization Name of Account Owner 	
28 First Name 		29 Middle Initial 	
30 Taxpayer Identification Number 		31 Address (Number, Street, and Apt. or Suite No.) 	
32 City 		33 State 	
34 Zip/Postal Code 		35 Country 	

2 Type of Filer a <input type="checkbox"/> Individual c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership d <input type="checkbox"/> Fiduciary		21 Type of Account a <input type="checkbox"/> Bank c <input type="checkbox"/> Other b <input type="checkbox"/> Securities	
22 Maximum Value of Account a <input type="checkbox"/> Under \$10,000 c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999 d <input type="checkbox"/> Over \$1,000,000		23 Account Number or other designation 	
24 Name of Financial Institution with which account is held 		25 Country in which account is held 	
26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If no, complete boxes 27-35.		27 Last Name or Organization Name of Account Owner 	
28 First Name 		29 Middle Initial 	
30 Taxpayer Identification Number 		31 Address (Number, Street, and Apt. or Suite No.) 	
32 City 		33 State 	
34 Zip/Postal Code 		35 Country 	

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. SEE INSTRUCTIONS FOR DEFINITION. File this form with:

**U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.**

**Paperwork Reduction Act** The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, Suite 200, 2070 Chain Bridge Road, Vienna VA 22182-2536.

**INSTRUCTIONS****General Instructions**

**Who Must File this Report** Each United States person, who has a financial interest in or signature authority, or other authority over any financial accounts, including bank, securities, or other types of financial accounts in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing TD F 90-22.1 with the Department of the Treasury on or before June 30, of the succeeding year.

**Exceptions**

An officer or employee of a bank which is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank, if the officer or employee has NO personal financial interest in the account.

An officer or employee of a domestic corporation whose equity securities are listed upon national securities exchanges or which has assets exceeding \$10 million and 500 or more shareholders of record need not file such a report concerning the other signature authority over a foreign financial account of the corporation, if he has NO personal financial interest in the account and he has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report, which includes that account.

Report any financial account (except a military banking facility as defined in these instructions) that is located in a foreign country, even if it is held at an affiliate of a United States bank or other financial institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank of other institution that is located in the United States, Guam, Puerto Rico, and the Virgin Islands.

**General Definitions**

**United States Person** The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

**Financial Account** Generally includes any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund. The term also means any savings, demand, checking, deposit, time deposit, or any other account maintained with a financial institution or other person engaged in the business of a financial institution.

**Account in a Foreign Country** A "foreign country" includes all geographical areas located outside the United States, Guam, Puerto Rico, and the Virgin Islands.

**Financial Interest** A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

(1) A United States person has a financial interest in each account for which such person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

(2) A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

**Signature or Other Authority Over an Account** A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

**Military Banking Facility** Do not consider as an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

**Filing Information**

**When and Where to File**-This report must be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 32621, Detroit, MI 48232-0621, or it may be hand carried to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI.

**EXPLANATIONS FOR SPECIFIC ITEMS****Consolidated Reporting**

A corporation which owns directly or indirectly more than 50 percent interest in one or more other entities will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entities provided that a listing of them is made part of the consolidated report. Such reports should be signed by an authorized official of the parent corporation.

If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting corporation need only note that fact on the form in Item 20. It will, however, be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

**Item 14**

If the filer owns the account jointly with any other party, then yes should be marked.

**Item 15**

If the filer holds this account with only one (1) other party, and all accounts listed are held jointly with that party, then complete items 16, 17, 18 and 19. Otherwise, leave these items blank.

**Item 20**

If the filer holds a financial interest in more than 25 foreign financial accounts, indicate the number in this box and do not complete any further items in Part II.

Any person who lists more than 25 foreign financial accounts in item 20 must when requested by the Department of the Treasury provide all the information called for in Part II.

**Item 22****Account Valuation**

For item 22, the maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year.

The value of stock, other securities or other non-monetary assets in an account reported on TD F 90-22.1 is the fair market value at the end of the calendar year, or if withdrawn from the account, at the time of the withdrawal.

For purposes of item 22, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs. If you had a financial interest in one or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year, complete Part II or III for each of these accounts.

**Item 26**

United States Persons with Authority Over but No Financial Interest In an Account - Except as provided in the following paragraph, you must state the name, address, and identifying number of each owner of an account over which you had authority, but if you complete items 27-35 for more than one account of the same owner, you need identify the owner only once. If you complete items 27-35 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign accounts." This statement must be based upon the actual belief of the person filing this form after he or she has taken reasonable measures to ensure its correctness.

If you complete Part II for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the identifying number and address of the parent corporation.

**Item 36****Signature**

This report must be signed by the person named in Part I. If the report is being filed on behalf of a partnership, corporation, or fiduciary, it must be signed by an authorized individual.

**Penalties**

For criminal penalties for failure to file a report, supply information, and for filing a false or fraudulent report see 31 U.S.C. 5322(a), 31 U.S.C. 5322(b), and 18 U.S.C. 1001.

**Exhibit E****Guidelines for Reviewing Retained Copies of Currency Transaction Reports Filed By Financial Institutions****Purpose**

When processing Currency Transaction Reports (CTRs, i.e. Forms 4789), the Internal Revenue Service (IRS) edits the forms for accuracy and completeness. If certain information is incomplete, illegible or not provided, IRS corresponds with the financial institution to obtain the information.

**General Procedures for Examiners**

1. The instructions on the reverse side of the CTR provide guidance in proper completion of the form.
2. Financial institutions should be encouraged to type or legibly print forms.
3. The IRS may correspond with the financial institution when one or more critical information elements is incomplete, illegible, or not provided. The correspondence is sent to the officer in charge of the financial institution at the address indicated in Part V of the CTR. Responses to IRS should be timely (within 10 days).
4. An examiner should direct an institution to file an amended or corrected form:
  - If the form was not corrected despite correspondence from the IRS, or
  - If (in the absence of IRS correspondence) the form does not adequately provide all the information requested.

**Instructions for Institutions Filing Amended Forms**

Institutions should be instructed to use the following procedures:

1. On a copy of the CTR originally filed, circle in red the incorrect, illegible or missing information.
2. On a clean CTR, check box 2a denoting an amended report.
3. Enter only the correct or amended information on the clean form in the appropriate line item or box and complete all information in Part V.
4. Sign and date the amended or corrected form.
5. Staple the amended or corrected form on top of the copy of the form originally filed.
6. Mail to the IRS Detroit Computing Center, P.O. Box 33604, Detroit, MI 48232-5604 Attn: CTR.

**Exhibit F****Bank Secrecy Act  
Cash Control Letter**

Docket # \_\_\_\_\_

Name \_\_\_\_\_

Date: \_\_\_\_\_

Branch: \_\_\_\_\_

\_\_\_\_\_ Officer in Charge; Currency Distribution/Cash Control Center

\_\_\_\_\_ Location

Dear Sir/Madam:

In order to facilitate our review for compliance with Financial Recordkeeping and Reporting Regulations, please submit the following information. Supporting source records should be made available for review upon request.

Please provide, using the attached format for items 1 and 2, the following information for the period

\_\_\_\_\_ to \_\_\_\_\_, inclusive.

1. For branches which ship and receive currency through a central currency distribution center within the institution, please provide:
  - a. A list of all currency shipments between the distribution center and the Federal Reserve Bank or correspondent institution;
  - b. A list, by branch, of all currency shipments between the distribution center and branches;
  - c. A list of currency shipments between branches;
  - d. A list of branches which have shown a significant increase in their use of large bills during the past twelve months, either as a portion of their total shipment of currency or in comparison to other branches.
2. For branches which transact (ship and/or receive currency) with the Federal Reserve Bank or correspondent institution;
  - a. A list of all currency transactions between the branch and the Federal Reserve Bank or correspondent institution;
  - b. A list of all currency transactions with other branches.
3. Copies of all correspondence with the Department of the Treasury or the Internal Revenue Service regarding exemption lists, requests for special exemptions and incorrectly filed Currency Transaction Reports.

Signed \_\_\_\_\_ Title \_\_\_\_\_

**Bank Secrecy Act  
Currency Shipment Report**

Docket # \_\_\_\_\_

Name \_\_\_\_\_

From \_\_\_\_\_

To \_\_\_\_\_

Officer in Charge \_\_\_\_\_

Location \_\_\_\_\_

**Currency Received**

<u>Date</u>	<u>from</u>	<u>Received shipment</u>	<u>Total amount of large (\$50's, \$100's, etc.) bills</u>
-------------	-------------	------------------------------	--

**Currency Shipped**

<u>Date</u>	<u>Shipped to</u>	<u>Total amount of shipment</u>	<u>Total amount of large (\$50's, \$100's, etc.) bills</u>
-------------	-----------------------	-------------------------------------	--

Signed \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
(Date)

**Exhibit G****Bank Secrecy Act  
Cash Control Letter**

Docket # \_\_\_\_\_

Name \_\_\_\_\_

Date: \_\_\_\_\_

Branch: \_\_\_\_\_

Dear Sir/Madam:

To facilitate our examination of compliance with Financial Recordkeeping and Reporting Regulations under Public Law 91-508, please furnish the Examiner in Charge with the information listed below.

Examiner \_\_\_\_\_

1. A copy of your list of customers who normally have currency transactions over \$10,000 (exempt customers)
2. Describe how currency transactions over \$10,000 for customers are recorded and reported by individual tellers at your office.
3. Describe the record used at your office to document, by denomination, currency transfers between tellers, including transfer from and to vault cash.
4. Name of person in your office who is responsible for filing Currency Transaction Reports (Form 4789).
5. Indicate where copies of all Currency Transaction Reports (Form 4789) prepared by your office are maintained.
6. A list of transactions for which Currency Transaction Reports (Form 4789) are due to be filed but have not yet been submitted by your office.
7. If periodic reviews are conducted by office management of exempt customers to ensure that their status has not changed under Recordkeeping and Reporting Regulations, please make supporting documentation available, including:
  - a. dates of last two reviews;
  - b. description of work reviewed;
  - c. names of individuals who conducted the review and their findings

Currency Transaction Reports (Form 4789) have been completed for all required transactions. Lists of customers who normally have currency transactions over \$10,000 (exempt customers) are currently maintained.

(Signed) \_\_\_\_\_ Office Manager

**Exhibit H****Guidelines for Branch Review****1. Guidelines for Selection of Branches.**

- a. In reviewing the information provided in Exhibit E and F (Branch Letter), use the following criteria to select branches for on-site review:
  - Branch requests for large denomination currency exceeding normal requirements for that branch.
  - Branch requests for large denomination currency are significantly greater than average branch requirements;
  - Branch does not ship large denomination currency;
  - Branch reports no exempt list;- Branch manager would not sign the statement in Exhibit F; and
  - Branch is characterized by unusual cash transactions with the Cash Control Center, Federal Reserve Bank, or correspondent institution.
- b. In the absence of significant leads, consider selecting a random sample of branches for on-site review.

**2. Guidelines for Selection of Tellers**

The selection of tellers should be governed by the institution's internal procedures. For example, if it is the institution's practice to direct all large currency transactions to specific tellers, concentrate on the work of those tellers. In the absence of such procedures, or if the procedures are not being followed, the examiner may determine that the work of all tellers should be reviewed. The selection may include recently hired tellers.

**3. Guidelines for Selecting Dates for Review**

When at the office location, the examiner is to review the work of selected tellers for a specific time period. In selecting the time frame in which the examination will be conducted, the examiner should take into account both the fact that the time period allowed for filing Forms 4789 and 4790 is 15 calendar days and the fact that the Internal Revenue Service processing time is 45 calendar days. If the examiner is reviewing transactions for two calendar weeks, the test period should be at least 60 calendar days prior to the examination date.



**Exhibit I****Frequently Violated BSA Provisions And Proper Citation**

Violations of the Treasury Department regulations implementing the Bank Secrecy Act, 31 CFR Part 103, and of the Office of Thrift Supervision regulations 12 CFR Part 563.177 for monitoring compliance with the Bank Secrecy Act are often incorrectly cited. The following chart provides the proper regulatory cite for the most common violations frequently cited incorrectly.

**U.S. DEPARTMENT OF THE TREASURY REGULATIONS  
31 CFR Part 103**

<u>Regulatory Cite</u>	<u>Provisions</u>	<u>Violations</u>
103.22(a)	Non, sub-paragraphs state specific provisions.	None.
103.22(a)(1)	Financial institutions must report currency transactions of more than \$10,000. Multiple transactions totaling more than \$10,000 shall be treated as a single transaction.	Currency transactions in excess of \$10,000 not reported. Multiple currency transactions in excess of \$10,000 not reported. Cash purchases of travelers checks, money orders, and/or cashiers checks in excess of \$10,000 not reported.
103.22(b)(1) & 103.22(b)(2)	Allowable exemptions.	Exemptions granted for businesses other than those covered by these sections.
103.22(d)	Exemptions must be supported by a signed written statement by the customer with required information.	Exemptions granted without obtaining a signed written statement from the customer. Customer statement not containing all of the required information.
103.22(f)	Exemptions must be maintained on a centralized list with the reason for the exemption and other required information.	Lack of a centralized list of exemptions. Exemptions granted but not entered on list. Failure to list banks exempted under Section 103.22(b)(1)(ii). Failure to maintain required information on list.
103.27(a)	None, sub-paragraphs state specific provisions.	None.

103.27(a)(1)	A CTR must be tiled within 15 days of the date of the transaction..	Filing a CTR later than 15 days after the date of the transaction
103.27(a)(3)	A copy of each CTR filed	Failure to retain a copy of a CTR must be retained for 5 years. that was filed. Failure to retain copies of filed CRTs for 5 years.
103.27(d)	Currency Transaction Reports must be on prescribed forms.  All information required on the CTR form shall be furnished.	Use of an outdated CTR form to report a currency transaction.  Omission of any information on a CTR (except for ID information, Box 15, see Section 103.28). Erroneous information on a CTR (except for ID information, Box 15, see Section 103.28)..
103.28	Must verify the identity of the person presenting a reportable transaction as well as the identity of the person or entity on whose behalf the transaction is affected. Documents used to verify the identity should be of the type used in normal check cashing procedures.	Failure to verify identification of customer. Inappropriate documentation used for verification of ID. e.g. signature card, comment such as "known customer," etc. Omission of any information in Box #15.
103.29(a)	Association must maintain chronological log(s) on cash sales of monetary instruments in amounts between \$3,000 and \$10,000 inclusive.	No log(s) maintained, covered transactions have occurred.
103.29(a)(1)(i)	Information required to be maintained in the chronological log(s) for purchasers with a deposit account relationship.	Required information is not recorded in the chronological log(s). Inappropriate information is recorded in the log(s).
103.29(a)(1)(ii)	Identification requirements for purchasers with a deposit account relationship.	Identification of purchaser not obtained. Inappropriate method used to identify purchaser.
103.29(a)(2)(i)	Information required to be maintained in the chronological log(s) for purchasers who do not have a deposit account relationship.	Required information is not recorded in the chronological log(s). Inappropriate information is recorded in the log(s).

103.29(a)(2)(ii)	Identification requirements for purchasers who do not have a deposit account relationship.	Identification of purchaser not obtained. Inappropriate method used to identify purchaser.
103.29(c)	Separate chronological log(s) for association branches must be maintained in a centralized location by the 15th of the following month.	Branch log(s) are not forwarded to centralized location by the 15th of the month following the month for which the log(s) were prepared.

**OFFICE OF THRIFT SUPERVISION REGULATIONS**  
**12 CFR Part 563.177**

<u>Regulatory Cite</u>	<u>Provisions</u>	<u>Violations</u>
563.177(a)	States purpose of the regulations, sub-paragraphs state specific provisions.	None.
563.177(b)	Written compliance program must be approved by the institution's board of directors by April 27, 1987 and recorded in the minutes. Institution must provide for the continued administration of their program.	Compliance program not in writing. Compliance program not approved by the institution's board of directors. Lack of or inadequate compliance program. Institution has program but are not following own procedures.
563.177(c)(1)	Program must provide for a system of internal controls to assure ongoing compliance.	Lack of or inadequate system of internal controls to ensure accurate reporting of currency transactions in excess of \$10,000. Lack of review procedures prior to filing CTRs.
563.177(c)(2)	Program must provide for independent testing for compliance.	Lack of or inadequate procedures for testing for reportable transactions and accurate CTR filing.
563.177(c)(3)	Program must designate individual(s) responsible for day-to-day compliance.	No employee designated responsibility for monitoring compliance.
563.177(c)(4)	Program must provide for training of personnel.	Lack of or inadequate training program for personnel. Training sessions not documented.

---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Bank Protection Act

### Section 405

---

#### Introduction

The purpose of the Bank Protection Act of 1968 (BPA) is to discourage robberies, burglaries and larcenies committed against financial institutions. The BPA requires the Federal financial institution supervisory agencies to establish minimum standards for the installation, maintenance, and operation of security devices and procedures to discourage these crimes, and to assist in the identification and apprehension of persons who commit them.

To fulfill the statutory mandate, OTS adopted implementing regulations in 1969, contained in 12 CFR Part 568. The regulations, substantially revised in 1991, contain several requirements for savings associations. A savings association's board of directors is responsible for compliance with the regulations. It is the board's responsibility to ensure that a written security program for the association's main office and branches is developed and maintained. In addition, the board must designate a security officer who has the authority, subject to board approval, to develop and administer a written security program.

The regulations establish minimum standards by specifying the contents of a security program and by requiring four specific security devices. Finally, to ensure that an association's security program is substantively reviewed on a timely basis, the regulations require the security officer to report at least annually to the board on the implementation, administration and effectiveness of the security program. Among other things, the report should contain information such as the status of employee training, the number of offenses committed against the association, and the success of prosecution for such offenses.

The timely filing of the required reports to the appropriate regulatory and enforcement agencies is a necessary function after a crime against an association has been committed. The primary form for reporting a crime is the Suspicious Activity Report (SAR), OTS Form 1601 (Exhibit A). The conditions under which this form is filed include any known or suspected criminal activity whether by

insiders or those outside the association or service corporation.

#### Security Program

To comply with the regulations, each association's security program must:

- Establish procedures for opening and closing for business;
- Establish procedures for the safekeeping of all currency, negotiable securities, and other valuables;
- Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny;
- Provide for selecting, testing, operating and maintaining appropriate security devices; and
- Establish procedures that will assist in identifying persons that commit a burglary, robbery, or larceny.

The regulations offer additional guidance as to specific procedures that may assist in the identification of persons that commit crimes: procedures may include the use of a camera to record activity in the office, the use of identification devices (e.g., prerecorded serial-numbered bills or chemical and electronic devices), and the retention of a record of any robbery, burglary, or larceny committed against the association.

#### Security Devices

The regulations require each association to have, at a minimum, the following security devices:

- A means of protecting cash and other assets, such as a vault;
- A lighting system for illuminating the vault during the hours of darkness;

- An alarm system or other appropriate device for promptly notifying law enforcement officials; and
- Tamper-resistant locks on exterior doors and windows that may be opened.

**Additional Considerations**

The above are the minimum standards for security devices and procedures that should comprise an association's security program. However, the security officer has the discretion under the regulations to determine which additional security devices will best meet the needs of the program. In this way, the security officer can choose the most up-to-date equipment that meets the requirements of a particular association, based on the level of risk. For example, the risk of robbery, etc. will generally be lower for an association in a small, rural environment where the incidence of crime is demonstrably low, and higher for an association in a dense, urban environment with a high incidence of crime. To assist an association in establishing its program, the regulations suggest certain factors to consider in the selection of additional security devices. These include the:

- Incidence of crimes against financial institutions in the area;
- Amount of currency and other valuables exposed to robbery, burglary, or larceny;
- Distance of the office from the nearest law enforcement officers;
- Cost of the security devices;
- Other security measures in effect at the office; and
- Physical characteristics of the office and its surroundings.

Provisions of the security program, including training for all employees, should be carefully monitored by management as well as examiners. Inadequate employee training could easily nullify the most comprehensive and detailed security program. In addition, an association that becomes careless in the area of maintenance may find that

its security devices are nonoperative or ineffective simply because equipment is not tested periodically.

**Suspicious Activity Report**

Effective April 1, 1996, savings associations and their service corporations are required by §563.180 to file a SAR when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.

A SAR is required to be filed for any known or suspected Federal criminal violation, or pattern of criminal violations: (1) involving insider abuse in any amount, (2) aggregating \$5,000 or more where a suspect can be identified, or (3) aggregating \$25,000 or more regardless of a potential suspect. A SAR is also required to be filed for any transaction aggregating \$5,000 or more that involves potential money laundering or violations of the Bank Secrecy Act.

A SAR is filed with the Financial Crimes Enforcement Network of the Department of the Treasury. A savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case can the reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the savings association or service corporation should immediately notify, by telephone, an appropriate law enforcement authority and the OTS in addition to filing a timely SAR.

A savings association or service corporation is not required to file a SAR under §563.180 for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities under the Bank Protection Act.

While the primary responsibility for filing a SAR rests with the association, examiners should ensure that the form has been appropriately filed in all applicable cases. Examiners should prepare a criminal referral form in the following situations:

- When the association has failed to file a SAR (note why it was not filed);
- If the report made by the association is deemed inadequate; or
- When the examiner discovers criminal activity.

A record of filing the form is required to be kept at the association's main office for five years.

The purpose of the report is to provide appropriate law enforcement authorities with complete and accurate information relating to known or suspected criminal activity. All required information should be supplied at the time of the referral unless such information is not known or can only be supplied at a later date subject to the Right to Financial Privacy Act. The provisions of the Right to Financial Privacy Act prohibit examiners from disclosing identifying information concerning the financial records of individuals and partnerships of five or less individuals who are customers of an insured institution to another governmental agency, unless the customer is notified. To avoid having to notify the customer, examiners should delete the customer's name and account number from any records transferred with the completed SAR. The report should indicate the existence of the protected information and documents not included. In the latter case, documents not provided with this form should be segregated and safeguarded in order that they might be subsequently supplied.

Examiners are not required to make any initial finding that such referrals would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities. Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with the Regional Office.

### **Monitoring and Enforcement**

OTS Regional staff should review for Bank Protection Act and Criminal Referral Reporting compliance by savings associations under their jurisdiction. Compliance determination by the staff may be derived from monitoring reports of examination, independent audit reports, SARs, and newspaper articles.

When the monitoring reveals significant deficiencies, substantial losses, or repeated incidents, staff may recommend an expansion of scope for this program area at the next regularly scheduled examination. Other corrective actions that the staff may wish to pursue include:

- Require an audit of the functions or accounts affected by the criminal acts and provide a report of action taken in response to the independent or internal audit findings;
- Report the status of the association's recovery of losses filed under its surety bond;
- Refer criminal acts by employees to the appropriate OTS authorities for possible suspension proceedings or removal;
- Direct the board of directors of the association to review and, where applicable, establish procedures to correct the deficiency.

Whenever the security devices or procedures used by a savings association are deficient in meeting the minimum requirements, the association may be required to take necessary corrective action. Pursuant to section 5 of the BPA, an association that violates OTS regulations is subject to a civil penalty not to exceed \$100 for each day of the violation.

### **Examination Objectives**

Determine whether the association has a security program and has provided for appropriate security devices and procedures in accordance with minimum regulatory requirements.

Determine whether known or suspected criminal violations have been identified and properly reported.

**Examination Procedures**

1. Review the association’s security program:
  - Ascertain whether its contents are in compliance with the requirements of 12 CFR §568.3(a);
  - Verify that the installation and maintenance of the security devices satisfy the requirements of 12 CFR §568.3(b); and
  - Determine whether the program is revised as appropriate to reflect changes in circumstances, e.g., the addition of a new facility, changes made to a facility, employee turnover, increased cash exposure, the responsiveness of law enforcement agencies, technological advances in security devices, etc.
2. Interview management and staff to ascertain if association personnel have adequate knowledge of policies and sufficient training to implement procedures.
3. Determine whether the security officer reports at least annually to the board of directors on the implementation, administration, and effectiveness of the security program.

4. Review security reports and records to ascertain whether criminal or suspected criminal violations have been reported to the proper authorities. Determine if the Suspicious Activity Report has been prepared where appropriate, and filed on a timely basis.
5. Determine the impact of criminal violations on the association and whether controls have been established to insure against the possibility of further violations.

**References**

*Law*

12 USC            Bank Protection Act  
1881-1884

*Regulations*

12 CFR §568    Minimum Security Devices and Procedures  
12 CFR           Suspicious Activity Reports and  
§563.180        Other Reports and Statements

*List of Exhibits*

Exhibit A        Suspicious Activity Report  
Form 1601

## Exhibit A

<b>Suspicious Activity Report</b>		<div style="background-color: black; color: white; padding: 2px; text-align: center; width: 20px; float: right;">1</div> <div style="clear: both;"></div> FRB: FR 2230 OMB No. 7100-0212 FDIC: 6710/06 OMB No. 3064-0077 OCC: 8010-9,8010-1 OMB No. 1557-0180 OTS: 1601 OMB No. 1550-0003 NCUA: 2362 OMB No. 3133-0094 TREASURY: TD F 90-22.47 OMB No. 1506-0001	
ALWAYS COMPLETE ENTIRE REPORT		Expires September 30, 1998	
1 Check appropriate box: a <input type="checkbox"/> Initial Report      b <input type="checkbox"/> Corrected Report      c <input type="checkbox"/> Supplemental Report			
<b>Part I Reporting Financial Institution Information</b>			
2 Name of Financial Institution		3 Primary Federal Regulator	
4 Address of Financial Institution		a <input type="checkbox"/> Federal Reserve      d <input type="checkbox"/> OCC	
		b <input type="checkbox"/> FDIC      e <input type="checkbox"/> OTS	
		c <input type="checkbox"/> NCUA	
5 City	6 State	7 Zip Code	8 EIN or TIN
9 Address of Branch Office(s) where activity occurred			10 Asset size of financial institution \$ .00
11 City	12 State	13 Zip Code	14 If institution closed, date closed (MMDDYY) ____/____/____
15 Account number(s) affected, if any a _____ b _____		16 Have any of the institution's accounts related to this matter been closed? a <input type="checkbox"/> Yes      b <input type="checkbox"/> No      If yes, identify _____	
<b>Part II Suspect Information</b>			
17 Last Name or Name of Entity		18 First Name	19 Middle Initial
20 Address			21 SSN, EIN or TIN (as applicable)
22 City	23 State	24 Zip Code	25 Country
26 Date of Birth (MMDDYY) ____/____/____			
27 Phone Number - Residence (include area code) ( )		28 Phone Number - Work (include area code) ( )	
29 Occupation			
30 Forms of Identification for Suspect: a <input type="checkbox"/> Driver's License      b <input type="checkbox"/> Passport      c <input type="checkbox"/> Alien Registration      d <input type="checkbox"/> Other _____ e Number _____      f Issuing Authority _____			
31 Relationship to Financial Institution: a <input type="checkbox"/> Accountant      d <input type="checkbox"/> Attorney      g <input type="checkbox"/> Customer      j <input type="checkbox"/> Officer b <input type="checkbox"/> Agent      e <input type="checkbox"/> Borrower      h <input type="checkbox"/> Director      k <input type="checkbox"/> Shareholder c <input type="checkbox"/> Appraiser      f <input type="checkbox"/> Broker      i <input type="checkbox"/> Employee      l <input type="checkbox"/> Other _____			
32 Is insider suspect still affiliated with the financial institution? a <input type="checkbox"/> Yes      If no, specify { c <input type="checkbox"/> Suspended      e <input type="checkbox"/> Resigned b <input type="checkbox"/> No      d <input type="checkbox"/> Terminated		33 Date of Suspension, Termination, Resignation (MMDDYY) ____/____/____	34 Admission/Confession a <input type="checkbox"/> Yes      b <input type="checkbox"/> No



<b>Part III Suspicious Activity Information</b>			<b>2</b>			
35 Date of suspicious activity (MMDDYY) ____ / ____ / ____		36 Dollar amount involved in known or suspicious activity \$ ____ .00				
37 Summary characterization of suspicious activity: <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">               a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering                b <input type="checkbox"/> Bribery/Gratuity                c <input type="checkbox"/> Check Fraud                d <input type="checkbox"/> Check Kiting                e <input type="checkbox"/> Commercial Loan Fraud                f <input type="checkbox"/> Consumer Loan Fraud                  r <input type="checkbox"/> Other _____             </td> <td style="width: 33%; vertical-align: top;">               g <input type="checkbox"/> Counterfeit Check                h <input type="checkbox"/> Counterfeit Credit/Debit Card                i <input type="checkbox"/> Counterfeit Instrument (other)                j <input type="checkbox"/> Credit Card Fraud                k <input type="checkbox"/> Debit Card Fraud                l <input type="checkbox"/> Defalcation/Embezzlement             </td> <td style="width: 33%; vertical-align: top;">               m <input type="checkbox"/> False Statement                n <input type="checkbox"/> Misuse of Position or Self-Dealing                o <input type="checkbox"/> Mortgage Loan Fraud                p <input type="checkbox"/> Mysterious Disappearance                q <input type="checkbox"/> Wire Transfer Fraud             </td> </tr> </table>				a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering b <input type="checkbox"/> Bribery/Gratuity c <input type="checkbox"/> Check Fraud d <input type="checkbox"/> Check Kiting e <input type="checkbox"/> Commercial Loan Fraud f <input type="checkbox"/> Consumer Loan Fraud  r <input type="checkbox"/> Other _____	g <input type="checkbox"/> Counterfeit Check h <input type="checkbox"/> Counterfeit Credit/Debit Card i <input type="checkbox"/> Counterfeit Instrument (other) j <input type="checkbox"/> Credit Card Fraud k <input type="checkbox"/> Debit Card Fraud l <input type="checkbox"/> Defalcation/Embezzlement	m <input type="checkbox"/> False Statement n <input type="checkbox"/> Misuse of Position or Self-Dealing o <input type="checkbox"/> Mortgage Loan Fraud p <input type="checkbox"/> Mysterious Disappearance q <input type="checkbox"/> Wire Transfer Fraud
a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering b <input type="checkbox"/> Bribery/Gratuity c <input type="checkbox"/> Check Fraud d <input type="checkbox"/> Check Kiting e <input type="checkbox"/> Commercial Loan Fraud f <input type="checkbox"/> Consumer Loan Fraud  r <input type="checkbox"/> Other _____	g <input type="checkbox"/> Counterfeit Check h <input type="checkbox"/> Counterfeit Credit/Debit Card i <input type="checkbox"/> Counterfeit Instrument (other) j <input type="checkbox"/> Credit Card Fraud k <input type="checkbox"/> Debit Card Fraud l <input type="checkbox"/> Defalcation/Embezzlement	m <input type="checkbox"/> False Statement n <input type="checkbox"/> Misuse of Position or Self-Dealing o <input type="checkbox"/> Mortgage Loan Fraud p <input type="checkbox"/> Mysterious Disappearance q <input type="checkbox"/> Wire Transfer Fraud				
38 Amount of loss prior to recovery (if applicable) \$ ____ .00	39 Dollar amount of recovery (if applicable) \$ ____ .00	40 Has the suspicious activity had a material impact on or otherwise affected the financial soundness of the institution?  a <input type="checkbox"/> Yes    b <input type="checkbox"/> No				
41 Has the institution's bonding company been notified?  a <input type="checkbox"/> Yes    b <input type="checkbox"/> No						
42 Has any law enforcement agency already been advised by telephone, written communication, or otherwise? If so, list the agency and local address. Agency _____						
43 Address _____						
44 City _____	45 State _____	46 Zip Code _____				
<b>Part IV Witness Information</b>						
47 Last Name _____		48 First Name _____				
49 Middle Initial _____		50 Address _____				
51 SSN _____		52 City _____				
53 State _____		54 Zip Code _____				
55 Date of Birth (MMDDYY) ____ / ____ / ____		56 Title _____				
57 Phone Number (include area code) (    ) _____		58 Interviewed a <input type="checkbox"/> Yes    b <input type="checkbox"/> No				
<b>Part V Preparer Information</b>						
59 Last Name _____		60 First Name _____				
61 Middle Initial _____		62 Title _____				
63 Phone Number (include area code) (    ) _____		64 Date (MMDDYY) ____ / ____ / ____				
<b>Part VI Contact for Assistance (If different than Preparer Information in Part V)</b>						
65 Last Name _____		66 First Name _____				
67 Middle Initial _____		68 Title _____				
69 Phone Number (include area code) (    ) _____		70 Agency (if applicable) _____				

Part VII Suspicious Activity Information Explanation/Description		3
<p><b>Explanation/description of known or suspected violation of law or suspicious activity.</b> This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.</p> <p>a <b>Describe</b> supporting documentation and retain for 5 years.</p> <p>b <b>Explain</b> who benefited, financially or otherwise, from the transaction, how much, and how.</p> <p>c <b>Retain</b> any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.</p> <p>d <b>Retain</b> any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.</p>	<p>e <b>Retain</b> any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.</p> <p>f <b>Indicate</b> where the possible violation took place (e.g., main office, branch, other).</p> <p>g <b>Indicate</b> whether the possible violation is an isolated incident or relates to other transactions.</p> <p>h <b>Indicate</b> whether there is any related litigation; if so, specify.</p> <p>i <b>Recommend</b> any further investigation that might assist law enforcement authorities.</p> <p>j <b>Indicate</b> whether any information has been excluded from this report; if so, why?</p> <p>For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:</p> <p>k <b>Indicate</b> whether currency and/or monetary instruments were involved. If so, provide the amount and/or description.</p> <p>l <b>Indicate</b> any account number that may be involved or affected.</p>	

**Paperwork Reduction Act Notice:** The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3106(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1766(a), 1786(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2)), and 31 U.S.C. 5318(g)). The Federal financial institutions regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 36 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

**Suspicious Activity Report  
Instructions**

**Safe Harbor** Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspected or known criminal violations and suspicious activities to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure."

**Notification Prohibited** Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

**In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.**

**WHEN TO MAKE A REPORT:**

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:
  - a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.
  - b. **Violations aggregating \$5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.
  - c. **Violations aggregating \$25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.
  - d. **Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or

sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

- i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;
- ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below \$10,000 and is suspicious, the institution should only file a suspicious activity report.

2. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.
3. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

---

#### HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

FinCEN, Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232

2. For items that do not apply or for which information is not available, leave blank.
  3. Complete each suspicious activity report in its entirety, even when the suspicious activity report is a corrected or supplemental report.
  4. Do not include supporting documentation with the suspicious activity report. Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for 5 years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
  5. If more space is needed to complete an item (for example, to report an additional suspect or witness), a copy of the page containing the item should be used to provide the information.
  6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.
-

---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Equal Employment Opportunity

### Section 410

---

#### Introduction

For the purposes of this section, the phrase “Equal Employment Opportunity” (or EEO) is used in reference to a number of Federal statutes, and their implementing regulations, enacted to achieve an equality of employment opportunity for all persons. The laws aim to achieve this objective by prohibiting employment-related decisions based on specified factors deemed unrelated to job qualifications and, in certain instances, by requiring special consideration of applicants from some historically employment-disadvantaged groups. Although the primary enforcement responsibility for these statutes and regulations has been assigned to other Federal agencies, it is important for examiners to have a basic knowledge of these requirements as they apply to savings associations. In addition, the OTS has regulations at §528.7 incorporating EEO protections found in other federal statutes, giving it direct supervisory jurisdiction in cases of alleged violations.

The laws described in this section on Equal Employment Opportunity are: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, and Executive Orders 11141 and 11246. Primary private sector enforcement of the first three laws rests with the Equal Employment Opportunity Commission (EEOC). Primary enforcement of the remaining laws, as they apply to private sector entities holding federal contracts, is assigned to the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

#### Regulatory Requirements

Note: The requirements are stated here in summary form. EEO laws and regulations contain many technical exceptions and special requirements that are beyond the scope of this section. Management and individual employees should be directed to consult with legal counsel or the Federal EEO enforcement agencies if in doubt about specific com-

pliance situations. Cities where EEOC offices are located are listed at the end of this chapter.

#### Title VII

Title VII of the Civil Rights Act of 1964, as amended, is the most comprehensive of the Federal EEO statutes in terms of the employment activities covered. Title VII prohibits employment-related decisions to be made on account of an applicant’s or an employee’s race, color, sex, religion, or national origin. If based on any of the protected factors, activities expressly prohibited by Title VII are: (a) any discrimination with regard to compensation, terms, conditions, or privileges of employment, and (b) any action to limit, segregate, or classify applicants or employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee.

In 1978, Title VII was amended to include the Pregnancy Discrimination Act. This amendment requires employers to treat pregnancy and pregnancy-related medical conditions the same as any other medical disability with respect to all terms and conditions of employment, including employee health benefits.

In general, any savings association or other private sector employer with 15 or more employees, any employment agency, any labor organization, and any federal, state or local government employer is subject to the prohibitions of Title VII. The 15-employee threshold test may, in certain cases, be applied on a consolidated basis for affiliated business units if such affiliates are deemed to operate as, or under the control of, a single entity with regard to employment policies and practices covered by Title VII.

It should be noted here that OTS Regulation 528.7, parallels in most respects the language of Title VII, and applies to all savings associations regardless of the number of employees.

Charges of unlawful discrimination or other prohibited practice must be filed with the EEOC

within 180 days of the alleged act. However, if the charging party has filed charges with a state or local fair employment practices agency, the time limit may be extended to 240 days, or as much as 300 days in some cases. A charge may be filed with the EEOC either by or on behalf of the aggrieved individual, or by or on behalf of an aggrieved class. The filing may be made in person or by mail with any EEOC field office. In most instances, by observing required filing deadlines, an aggrieved party preserves the right under Title VII to bring a private civil action in the United States district courts if satisfaction is not obtained through the EEOC.

Remedies under Title VII are tailored to specific findings of discrimination by EEOC or by the federal district courts. These remedies may include requiring an employer to end discriminatory practices and systems, and in some cases, to provide specific “make whole” compensation for victims of discrimination.

“Make whole” remedies may involve reinstatement, hiring, reassignment, promotion, training, seniority rights, backpay, and other compensation and benefits. Backpay awards under Title VII cannot accrue from a date more than two years prior to filing of a charge.

Title VII makes it unlawful for employers (and other covered parties) to retaliate against any individual who opposes unlawful employment practices or attempts to exercise his or her rights under the law.

### **Age Discrimination in Employment Act of 1967**

The Age Discrimination Act protects employees 40 years of age and older from arbitrary age discrimination in hiring, discharge, pay, promotions, fringe benefits, and other aspects of employment. The law is intended to promote employment of older persons on the basis of ability rather than age, and to help employers and employees find ways to meet problems arising from the impact of age on employment. One explicit requirement of the Act is that employers must offer all employees and their spouses 65 years of age and older the same health coverage, under the same conditions, that is offered to employees under age 65.

In general, any member savings institution or other private sector employer with 20 or more employees; all federal, state, and local governments; employment agencies; and all labor organizations with 25 or more members or which provide personnel placement services; are subject to the provisions of this Act. Until 1990, mandatory retirement age provisions of certain collective bargaining agreements existing on June 30, 1986, may remain in force (but may not be renewed) for employees age 70 or older.

The law does not apply where age is a “bona fide occupational qualification,” although instances where an employer can prove age to meet the E.E.O.C. tests for a “BFOQ” will be rare. It also does not bar employers from differentiating among employees based on reasonable factors other than age, or from observing the terms of a bona fide seniority system or any bona fide employee benefits plan (e.g., retirement, pension, or insurance plan), except that no seniority system or benefits plan will excuse otherwise prohibited mandatory retirement or a refusal to hire.

A charge of unlawful age discrimination must be filed with the EEOC within two years of the alleged violation (three years if the violation is alleged to be willful). However, to preserve the right to file a private suit in United States District Court, the charge must be filed with the EEOC within 180 days. This deadline is extended if charges are filed under state age discrimination laws (if any) to the earlier of 300 days after the alleged act or 30 days after termination of proceedings by the state agency. In general, a private suit may not be filed until 60 days after filing of the complaint with the EEOC, and not at all if EEOC elects to pursue legal action itself.

Potential penalties for employer violations of the Age Discrimination in Employment Act include payment of damages, interest, liquidated damages, attorneys’ fees, and court costs. EEOC’s stated policy is to “seek full and effective relief for each and every victim of employment discrimination, whether it is sought in court or in conciliation agreements reached before litigation.”

Employers are prohibited from retaliating against any person who files a charge, participates in an investigation, or opposes an unlawful practice.

### **Equal Pay Act of 1963**

The Equal Pay Act protects women and men who perform substantially equal work in the same work establishment against pay discrimination based on sex. This form of discrimination is also prohibited by Title VII. However, the specified penalties and remedies under the Equal Pay Act may make it a more attractive enforcement tool in cases where it can be applied.

The Equal Pay Act protects most private employees whose employers are covered by the Fair Labor Standards Act (FLSA). FLSA criteria for determining coverage are quite complex. However, most business entities subject to the FLSA will be aware of their standing and of the other requirements imposed on them by that statute. Examiners should assume that any member savings institution is subject to the FLSA unless the institution can demonstrate exempt status.

With respect to entities subject to the FLSA, the Equal Pay Act prohibits (1) employers from discriminating on the basis of sex in the payment of wages [defined to include all remuneration for work performed] to men and women performing substantially equal work in the same establishment, (2) employers from reducing wages of either sex to comply with the law, and (3) labor organizations from causing employers to violate the law. However, the law does not prohibit pay differences based on factors other than sex (e.g., seniority, merit, or systems that reward actual worker productivity).

Complaints under the Equal Pay Act may be made in person, by mail, or over the telephone to any field office of the EEOC. A local U.S. Department of Labor Wage and Hour Office will also accept complaints for forwarding to the EEOC. Lawsuits to enforce the provisions of the Act may be brought by the EEOC or, in conformity with EEOC rules, by individual complainants.

Penalties for employer violations of the Equal Pay Act may include payment of back wages, interest,

liquidated damages, attorneys' fees and court costs. Criminal penalties may also apply. Employers are prohibited from retaliating against any person who files a complaint or participates in an investigation under this Act.

### **EEO Laws Applicable to Federal Contractors**

For purposes of these laws, a federal contractor is any legal person holding (a) any federally-assisted construction contract or (b) one or more contracts to provide goods or services to the federal government which in any 12 month period amount to transactions valued at \$10,000 or more. In addition, financial institutions serving as depositories for federal funds, or acting as issuing or paying agents for U.S. savings bonds or notes are considered to be federal contractors.

The FDIC, effective November 5, 1990, removed 12 CFR 385.4, which was formerly a FSLIC regulation (12 CFR 563.36) that had been transferred to the FDIC in August 1989. The former FSLIC regulation indicated that the U.S. Labor Department's Office of Federal Contract Compliance Programs had determined that FSLIC insurance was a contract for purposes of Executive Order 11246, and based on that determination, so did the FSLIC. The FDIC, on the other hand, had consistently held that government deposit insurance was not a contract for purposes of Executive Order 11246, and that insured institutions are not government contractors solely by reason of being FDIC-insured. Based on that longstanding position, the FDIC removed the transferred FSLIC regulation. An administrative law judge has ruled that government deposit insurance is not a contract for purposes of Executive Order 11246 in U.S. Department of Labor, Office of Federal Contract Compliance Programs v. USAA Federal Savings Bank (U.S. Department of Labor Case No. 87-OFC-87, October 4, 1990).

EEO provisions applicable to federal contractors pursuant to these laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP). Questions may be directed to the OFCCP by calling the nearest OFCCP area office or (202) 219-9475 in Washington, D.C. or by

writing to OFCCP at 200 Constitution Avenue, NW, Washington, D.C. 20210.

**Executive Order No. 11141**

This order prohibits age discrimination in employment activities engaged in by federal contractors.

**Executive Order No. 11246**

This order requires that covered contracts with the federal government contain an agreement that the contractor will not discriminate against any applicant or any employee because of race, color, religion, sex, or national origin. Further, the contractor must agree to take affirmative action to insure that applicants and employees are treated without regard to race, color, religion, sex, or national origin. Contractors must post equal employment opportunity posters, as prescribed by the OFCCP [41 CFR 60-1.42], in conspicuous places readily visible to employees and applicants, and must make affirmative equal employment opportunity statements in all recruiting advertisements. A contractor with 50 or more employees must develop a written affirmative action plan which provides in detail for specific steps to guarantee equal employment opportunity and which includes a table of job classifications in use.

Complaints under E.O. 11246 must be filed with any office of the OFCCP within 180 days of the alleged violation, unless the time for filing is extended by the Director. OFCCP enforcement remedies may include removal of contractors from lists of eligible bidders, cancellation of existing contracts, and suits brought by the Department of Justice for breach of contract.

**Rehabilitation Act of 1973**

This statute prohibits federal contractors [and the federal government and recipients of federal assistance] from discriminating against physically and mentally handicapped individuals in employment. Further, contractors must make special efforts to recruit, employ, train and promote qualified handicapped persons. Contractors with 50 or more employees must maintain an affirmative action program setting forth the contractor's policies and practices to

employ and advance qualified handicapped persons.

A qualified handicapped individual is defined as a person capable of performing a particular job with reasonable accommodation to his or her handicap. Complaints under this Act, by applicants and employees, must be filed in writing with the Director, OFCCP, within 180 days of the alleged violation, unless an extension is approved by the Director.

**Vietnam Era Veterans' Readjustment Act of 1974**

This statute prohibits federal contractors [and the federal government and recipients of federal assistance] from discriminating against disabled veterans and Vietnam era veterans in employment. Further, contractors must make special efforts to recruit, employ, train and promote qualified disabled veterans and Vietnam era veterans.

Contractors with 50 or more employees are required to maintain an affirmative action program setting out the contractor's policies and practices to employ and advance qualified veterans covered by the Act. Employment opportunities for positions paying under \$25,000 annually must be registered by contractors with their state employment offices.

Disabled veterans are defined to be persons entitled to disability compensation under the rules of the Veterans Administration for disability rated at 30 per centum or more, or persons discharged from active duty for disability incurred or aggravated in the line of duty. Vietnam era veterans are defined as persons who (1) served on active duty for a period of more than 180 days any part of which occurred between August 5, 1964 and May 7, 1975 and were discharged therefrom with other than dishonorable discharge, or (2) were discharged from active duty for a service related disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

Complaints by applicants and employees under this Act may be filed in writing with the Veteran's Employment Service of the Department of Labor through a Local Veteran's Employment Representative at the local State employment office. Investigations and enforcement are by OFCCP.



**Examination Objectives**

To determine that the savings association is aware of and has established procedures to insure compliance with its EEO obligations.

To determine that the savings association has adequate internal controls or reviews in place to detect deviations from its stated procedures.

**Examination Procedures**

1. Determine whether the board of directors and senior officers of the savings association are knowledgeable regarding their institution's EEO obligations.
2. Determine whether the savings association has established written policies and procedures designed to satisfy those EEO obligations.
3. Determine whether established policies and procedures are likely, if followed in practice, to result in EEO compliance and meet the overall affirmative action objectives of the savings association.
4. Determine whether the savings association has implemented an internal review mechanism to identify and correct EEO errors and omissions in its handling of personnel matters.

**References***Laws*

- 42 U.S.C. Title VII, Civil Rights Act of 1964, as amended (Public Law 88-352, 2000e et seq., 78 Stat. 253 as amended by P.L. 92-621, P.L. 93-608, P.L. 95-251, P.L. 95-555, P.L. 95-598, P.L. 96-191, and by Federal Reorganization Plan No. 1 of 1978 (43 FR 19807))
- 29 U.S.C. Age Discrimination in Employment Act of 1967, as amended (Public Law 90-202, as amended)

29 U.S.C. Equal Pay Act of 1963 (Public Law 88-38)  
201 et seq.

29 U.S.C. Rehabilitation Act of 1973  
791 et seq. (Public Law 93-112, as amended)

38 U.S.C. Vietnam Era Veterans  
2011 et seq. Readjustment Act of 1974 (Public Law 93-508)

Executive Order (Reprinted, 5 U.S.C.3301 (1982))  
No. 11141

Executive Order As amended by Executive Order  
No. 11246 No. 12086 (Reprinted, 42 U.S.C. 2000(e) (1982))

*Regulations*OTS Regulations (12 CFR):

Part 528.7 Nondiscrimination in Employment

Equal Employment Opportunity Commission Regulations (29 CFR):

Parts 1600- Guidelines, enforcement  
1691 procedures, and reporting requirements imposed by the EEOC

Office of Federal Contract Compliance Programs Regulations (41 CFR):

Part 60-1 Obligations under Executive Order No. 11246, as amended

Part 60-250 Vietnam Era Veterans' Readjustment Assistance

Part 60-741 Rehabilitation [of Handicapped Individuals]

48 CFR [Federal Acquisition  
Part 22 Regulations\* ]

\* Title 48 CFR replaced Title 41 CFR Subtitle A, Chapters 1 to 49 for contracts established on or after April 1, 1984 (50 FR 26987, July 1, 1985).

Application of Labor Laws to Government Acquisitions Subpart 22.8-Equal Employment Opportunity Subpart 22.9- Non-discrimination Because of Age Subpart 22.13-Special Disabled and Vietnam Era Veterans Subpart 22.14-Employment of the Handicapped

Denver, CO  
Detroit, MI  
El Paso, TX  
Fresno, CA  
Greensboro, NC  
Greenville, SC  
Honolulu, HI  
Houston, TX  
Indianapolis, IN  
Jackson, MS  
Kansas City, MO  
Little Rock, AR  
Los Angeles, CA  
Louisville, KY

Philadelphia, PA  
Phoenix, AZ  
Pittsburgh, PA  
Raleigh, NC  
Richmond, VA  
San Antonio, TX  
San Diego, CA  
San Francisco, CA  
San Jose, CA  
Savannah, GA  
Seattle, WA  
St. Louis, MO  
Tampa, FL  
Washington, DC

### **EEOC - Voluntary Assistance Program**

The EEOC offers a special program of educational and technical assistance to organizations employing 500 or fewer workers. Titled the "Voluntary Assistance Program," this effort is designed to assist small to mid-size employers who lack specialized in-house staff trained in EEO compliance. The program operates as a series of symposia held quarterly in various parts of the country. Senior EEOC officials share current information and general guidance regarding rights and obligations under federal laws prohibiting discrimination in employment.

At program seminars, EEOC officials deal only with generic issues. No specific information is requested from any attendee. The underlying theme of the program is simply that good EEO practices are good management practices. Additional information on upcoming seminars may be obtained by calling toll free 800-USA-EEOC, or writing to the Office of Program Operations, EEOC, 2401 E Street, NW, Washington, DC 20507.

Private sector employers and employees desiring additional information about EEOC policies may contact their nearest local office or call EEOC toll free at 800-USA-EEOC. Hearing impaired may contact EEOC's TDD number (202) 634-7057. Written questions should be mailed to any EEOC field office, or to the EEOC at 2401 E Street, NW, Washington, DC 20507.

### **Equal Employment Opportunity Offices**

The EEOC has offices in the following cities:

Albuquerque, NM	Memphis, TN
Atlanta, GA	Miami, FL
Baltimore, MD	Milwaukee, WI
Birmingham, AL	Minneapolis, MN
Boston, MA	Nashville, TN
Buffalo, NY	Newark, NJ
Charlotte, NC	New Orleans, LA
Chicago, IL	New York, NY
Cincinnati, OH	Norfolk, VA
Cleveland, OH	Oakland, CA
Dallas, TX	Oklahoma City, OK

---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Economic Sanctions

### Section 415

---

#### Introduction

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury is responsible for administering a series of laws that impose economic sanctions against selected foreign countries to further U.S. foreign policy and national security objectives.

OFAC has promulgated regulations that implement the sanctions contained in these laws. In general, those regulations address two areas. First, the regulations block accounts and other assets of countries identified as being a threat to national security by the President. This always involves accounts and assets of the sanctioned countries' governments, but may also involve nationals of the sanctioned countries. Second, the regulations prohibit unlicensed trade and financial transactions with such countries.

Illustrative examples of the types of activities prohibited or severely limited include the import or export of any goods or services to or from North Korea, any transfers of Cuban funds held in U.S. bank accounts, and dealings in Libyan assets.

U.S. law requires that assets and accounts be blocked when such property is located in the U.S., is held by U.S. individuals or entities, or comes into the possession or control of U.S. individuals or entities.

Certain individuals and entities (companies) located around the world that are acting on behalf of sanctioned country governments have been identified by the U.S. Treasury and are generally referred to as "Specially Designated Nationals" or "Specially Designated Narcotics Traffickers." They are to be treated as if they are part of the sanctioned governments. That is, U.S. persons are prohibited from dealing with them just as if they were the sanctioned governments, and all their assets and accounts are blocked. The names of these individuals and entities are regularly published in the *Federal Register*.

Unlike some federal statutes, there is no specific language in any of the sanctions laws that delegate

administrative enforcement responsibility to any of the financial institution regulatory agencies. Consequently, the OTS' responsibilities fall under its general examination responsibility of ensuring that applicable laws and regulations are being followed.

The Appendix to this section lists the OFAC laws and regulations, embargoed countries and individuals, penalties and reporting procedures for complying with the OFAC economic sanctions program. The information can be accessed from OFAC's web site at <http://www.treas.gov/ofac/>.

Further information may be obtained from OFAC the U.S. Treasury Department at 1-800-540-6322 or 202-622-2490. Examiners and institutions should be cautioned that the sanctions laws change rapidly and OFAC or the OTS should be contacted if an examination raises issues concerning those laws.

#### Examination Objectives

To determine that the institution is aware of the Treasury regulations that impose economic sanctions against certain countries.

To determine that the institution's audit program has procedures in place to verify compliance.

#### Examination Procedures

1. Determine that the institution is aware of the Treasury's regulations by discussing them with senior level management.
2. Determine that the institution's internal audit or compliance program contains procedures to ascertain whether the institution is in compliance with the regulations.
3. If the internal program includes the procedures, determine whether an audit has actually included them in its scope.

## FOREIGN ASSETS CONTROL REGULATIONS FOR THE FINANCIAL COMMUNITY

I. Introduction .....	2
II. OFAC Laws, Embargoed Countries, and Criminal Penalties .....	2
III. Civil Penalties .....	2
IV. Compliance Programs and Audit Procedures .....	3
V. Terminology .....	4
A--Blocking .....	4
B--Blocked Account .....	4
C--General License.....	4
D--Specific License .....	4
E--Offset .....	4
F--Property .....	4
G--Person Subject to the Jurisdiction of the United States .....	4
H--Specially Designated Nationals.....	4
I--Census .....	4
VI. Bank Responsibility by Country.....	4
A--CUBA .....	4
B--NORTH KOREA.....	9
C--LIBYA .....	10
D--IRAQ .....	11
E--YUGOSLAVIA .....	14
F--UNITA (Angola). .....	16
G--IRAN .....	16
H--TERRORISM (SDTs, SYRIA, FTOs) .....	20
I--NARCOTICS (SDNTs) .....	21
J--BURMA (MYANMAR) .....	21
K--SUDAN .....	22
L—NONPROLIFERATION.....	23
M—TALIBAN(Afghanistan) .....	24
VII. Reporting and Procedures (including TD F 90-22.50) .....	25

<http://www.treas.gov/ofac/t11facbk.pdf>

---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Interest on Deposits

### Section 420

---

#### Introduction

In 1993, the OTS made numerous changes to its regulations pursuant to the adoption of Regulation DD implementing the Truth in Savings Act, and the actions taken under the Regulatory Review Program. To reduce regulatory burden, the OTS reviewed its regulations to identify those provisions which were unnecessary and onerous. Sections pertaining to premiums, give-aways, advertising, and disclosures on fixed term accounts have either been removed or amended, as reflected in the revised narrative and examination procedures for this section of the handbook.

The effective annual yield formula previously used to determine the amount of interest paid on deposits has been replaced by the Annual Percentage Yield calculation contained in Regulation DD. In addition, Regulation DD restricts the method by which institutions determine the account balance for interest calculation purposes. Refer to section 365 of this handbook for discussion on Regulation DD.

While many of the deposit restrictions, such as mandatory early withdrawal penalties, are not included in the OTS's regulations, it should be noted that associations under the OTS's jurisdiction are subject to the FRB reserve requirements set forth in Regulation D. In this regard for example, the presence and amount of early withdrawal penalties will affect the classification of deposits for reserve purposes.

*Note:* Compliance with Regulation D is currently covered during safety and soundness examinations. For examination procedures, see Thrift Activities Handbook, Section 561.

#### Requirements

##### Accounts

Federally chartered savings associations may issue demand deposit accounts and savings accounts for indefinite or fixed terms. Savings associations are also authorized to issue Money Market Deposit

Accounts (MMDAs) and negotiable order of withdrawal accounts (NOWs) by 12 U.S.C. 1464(b)(1) and 12 U.S.C. 1832, respectively. There are no interest-rate ceilings on any accounts offered by savings associations and under OTS regulations there are no requirements for early withdrawal penalties. (The OTS believes, however, that early withdrawal penalties are useful in maintaining stability in all classes of Certificate of Deposits (CDs).)

Following is a list of the authorized types of accounts and the requirements associated with each:

1. **Regular Savings Account (Passbook Account)** — Section 561.42 provides that a savings account is any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account. There are essentially no specific limitations on these accounts imposed by OTS, with the exception that the savings association must reserve the right to require at least seven days' notice prior to withdrawal. These accounts must, however, meet certain requirements to qualify for lower reserve requirements as a savings account under Regulation D.
2. **Fixed-term Account (Certificate Account)** — Pursuant to §563.7, a certificate account must have a term of at least seven days. (Note: Accounts with fixed terms of less than seven days would be considered a demand deposit.)

An association may prohibit withdrawal of any portion of a certificate account prior to maturity. An association may not, however, restrict withdrawal or impose an early withdrawal penalty under the following circumstances:

- After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or
- After an account owner is determined by a court or other administrative body of

proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

3. **Money Market Deposit Account (MMDA)** — These accounts can be made available to any depositor, including individuals, corporations, government entities, and not-for-profit organizations. The association must reserve the right to require seven days' notice prior to withdrawal.

Pursuant to §561.28(a)(2), depositors are restricted to no more than six transfers per calendar month or statement cycle of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same insured association, to the association itself, or to a third party. No more than three of these transfers may be by check, draft, debit card, or similar order made by the depositor and payable to third parties. The depositors may, however, make unlimited transfers for the purpose of repaying loans and associated expenses at the association, for interaccount transfers in person or at an ATM from the MMDA account to accounts of the same account holder at the same association, and for cash or check withdrawals made in person, by mail, messenger, ATM, or telephone (via check mailed to the depositor).

In order to ensure that these requirements are met the association must either prevent transfers in excess of the limitations or adopt procedures to monitor transfers after-the-fact. In the second case, the association must take necessary steps to ensure that the excessive transfers do not continue. In the event that a depositor continues to make transfers in excess of the limitations subsequent to being contacted by the association in that regard, the association must either restrict access to the account or transfer the funds into another account the depositor is eligible to maintain.

4. **Negotiable Order of Withdrawal Account (NOW)** — NOW accounts may only be held by one or more individuals, government enti-

ties depositing public funds, and not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes. These eligible "not for profit" organizations are described in §§501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code. The Internal Revenue Service (IRS) has ruled that a non-profit housing organization created to aid low and moderate income families may qualify for a tax exemption under §501(c)(3), and pursuant to this ruling the IRS has deemed many public housing authorities eligible for such exemption. Sole proprietorships and unincorporated businesses owned by a husband and wife are considered to be for the benefit of "one or more individuals" for purposes of eligibility for NOW accounts.

The association must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account. A depository institution is authorized by 12 USC 1832 to permit the eligible owner, as described above, to make withdrawals from these accounts by negotiable or transferable instruments for the purpose of making transfers to third parties. Any depository institution which violates §1832 could be subject to a fine of \$1,000 for each violation.

5. **Checking Accounts (Demand Deposit Accounts)** — Federal savings associations are authorized to issue demand deposits accounts by §§545.11 and 545.12, but restricted from paying interest on such deposits by §545.12 (b). They may be issued to any person.

Section 561.16 defines the term "demand accounts" to mean non-interest bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation or otherwise and are payable on demand as provided in §563.6(b).

#### **Finders' and Brokers' Fees**

As provided in §561.16(b), finders' and brokers' fees paid by savings associations for demand de-

posits will not be considered to be a payment of interest on the account if:

- the fee is a bonus in cash or merchandise to the insured association's employees for participation in an account drive, contest or other incentive plan where the bonus is based on the total amount of deposits solicited; or
- if the fee is paid to a bona fide broker, which is considered to be one who is principally engaged in the business of brokering deposits, securities, or money market instruments, there is a written agreement between the broker and the association, and an officer of the broker gives written certification that no portion of the fee paid is directly or indirectly passed on to the depositor.

### **Lotteries**

Section 410 of the National Housing Act of 1934, 12 USC 1730c, prohibits SAIF insured institutions from dealing in lottery tickets. The Home Owner's Loan Act, 12 USC 1463(4)(e), prohibits federal savings associations from dealing in lottery tickets. These statutes define "lottery" to include any arrangement under which three or more persons (participants) advance money or credit to another in exchange for the possibility or expectation that one or more but not all participants (winners) will receive by reason of their advances more than the amounts they have advanced; the identity of the winners is determined by any means which includes a random selection; a game, race or contest. . . . The term "lottery ticket" includes any right, privilege, or possibility . . . of becoming a winner in a lottery.

### **Advertising**

#### *Interest on Deposits*

The rules governing the advertising of interest on deposits are set forth in §230.8 of Regulation DD. Refer to section 365 of this handbook for guidance.

### **Examination Objectives**

To determine whether the savings association is meeting all requirements for different types of accounts.

### **Examination Procedures**

1. Determine if the savings association is reserving the right to require at least the minimum advance notice on its accounts in its account contracts.
2. Determine through a review of savings association policies, procedures, and practices if any early withdrawal restrictions or penalties imposed by the savings association on certificate accounts are waived under the following circumstances:
  - a. After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or
  - b. After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.
3. Review the savings association's policies, procedures, and practices to determine if they adequately restrict the number of transactions allowable in MMDA accounts.
4. Determine if the savings association allows only individuals, government entities (public units), or not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or similar purposes to hold NOW accounts.
5. Determine if the savings association refrains from paying interest on demand deposit accounts.
6. Determine if the payment of finders' or brokers' fees on demand deposit accounts meet

the limitations in order not to be considered interest payments.

12 USC 1832 Federal Deposit Insurance Act, NOW Accounts: Transfers from Interest Bearing Savings Accounts, Prohibition on certain activities by depository institutions

References

Laws

- 12 USC 1463(4)(e) Home Owner’s Loan Act, Supervision of Savings Associations, Participation by savings associations in lotteries and related activities
- 12 USC 1464(b)(1) Home Owner’s Loan Act, Federal Savings Associations Deposits and Related Powers
- 12 USC 1730c National Housing Act of 1934, Insurance of Savings and Loan Accounts, Participation by insured institutions in lotteries and related activities

Regulations

- 12 CFR 545 Office of Thrift Supervision, Department of the Treasury, Operations Regulation
- 12 CFR 561 Office of Thrift Supervision, Department of the Treasury, Definitions Regulation
- 12 CFR 563 Office of Thrift Supervision, Department of the Treasury, Operations Regulation
- 12 CFR 230 Federal Reserve System, Regulation DD



---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Advertising

### Section 425

---

#### Introduction

The Federal Reserve Board's Regulation DD, which implements the Truth in Savings Act, contains detailed advertising provisions that apply all savings associations. Subsequent to publication of the new regulation, the OTS amended its advertising regulations in order to eliminate conflicting, duplicative, or obsolete regulatory provisions. Since Regulation DD contains the newly adopted advertising provisions, §563.27(a) of the OTS Regulations was removed.

In addition, obsolete §§563.29 and 563.27(b)(2) were removed from the OTS Regulations. Since both insurance funds are governed by the same FDIC rules, OTS determined that the corporate title and name restrictions contained in the above-cited sections were no longer necessary for consumer protection. The revised regulation §563.27 only addresses the accuracy of savings associations' advertising of services, contracts, investments, and financial condition. Refer to Section 365 of this handbook for information on Truth in Savings.

Part 328 of the Federal Deposit Insurance Corporation regulations also apply to insured savings associations.

#### Requirements

##### Advertising of Services, Contracts, Investments or Financial Condition

Section 563.27 restricts any kind of advertisement or representation that is inaccurate or in any way misrepresents the savings association's services, contracts, investments, or financial conditions. This section defines advertising as including print or broadcast media, displays and signs, stationery, and all other promotional materials.

##### *Misleading advertising regarding tax-deferred annuity plans*

Savings associations offering annuity plans through their service corporations, where an un-

derwriting insurance company receives for their reinvestment purposes the depositors-annuitants' invested funds, must ensure that the associations' advertising of such accounts are not misleading.

To meet the requirements of §563.27, that advertising must be accurate and must avoid misrepresentation, SAIF-insured associations that advertise such tax-deferred annuity plans:

- must affirmatively state that the investments are not insured; and
- may not imply that the annuity is an "account" in the association. In describing such annuity plans, this prohibition would preclude the use of such terms as "account," "deposits," "savings," "savings instruments," "savings products," and the like.

These requirements do not apply to annuity plans wherein the invested funds are held as SAIF-insured savings accounts in an association, such as where an insurance company acts as an agent for a depositor-annuitant, or where the depositor-annuitant's SAIF-insured savings account is held by a custodian in trust for an insurance company.

##### Advertisement of Membership

Savings associations insured under the FDIC's Savings Associations Insurance Fund (SAIF) are also subject to the FDIC's rules regarding advertisement of membership (12 CFR 328). Section 328.1(b) specifies the size and design of the official sign that SAIF-insured savings associations must use. Generally, §328.4(a) requires that this sign be continuously displayed in a savings association at each station or window where insured deposits are usually and normally received in its principal place of business and at all of its branches (except at automated service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received). Section 328.4(b) includes specific information as to how a savings association may obtain official signs. Savings associations are prohibited from

displaying the FDIC official bank sign at its principal place of business or at any of its branches.

### Advertising of Debt Securities

Savings associations' advertisements of debt securities are subject to Rule 134 and 135 issued under the Securities Act of 1933. These Rules are applied to savings associations' offerings through the securities offering regulations at 12 CFR 563g.

The OTS has also issued a Sales of Securities regulation at §563.76. This section generally prohibits the sale of debt or equity securities issued by a savings association or its affiliates in the offices of the savings association. A limited exception applies to the offer and sale of equity securities during a mutual to stock conversion. Other limited exceptions are enumerated in Thrift Bulletin 23a.

Part 563g generally prohibits any offer or sale of a security unless the offer or sale is accompanied or preceded by an offering circular that meets certain specified requirements and is filed with and declared effective by the OTS. However, several exemptions are available under the regulations, such as if the offer involves certain fully collateralized securities, is made in a non-public offering, or involves a security that is exempt from registration. In addition, certain communications (e.g., media advertisements, sales literature and other forms of publicity) are not considered to be an offer if (1) prior to the filing of an offering circular the requirements of SEC Rule 135 are met, or (2) subsequent to the filing an offering circular, the communications satisfy the requirements of SEC Rule 134.

Thrift Bulletin 31-2 provides guidance on the advertising of debt offerings and equity securities. As stated in TB 31-2, the following is a list of permitted and required disclosures:

#### *Permitted Disclosures*

1. The name of the issuer;
2. The title of the security;
3. The amount of the securities being offered;

4. A brief indication of the general type of business of the issuer;
5. The price of the security, the method by which the price will be determined, or probable price range;
6. If a fixed interest debt security, the yield, or the probable yield;
7. The name and address of the sender of the communications and the fact that the sender is participating in the distribution of the security (if true);
8. The names of the managing underwriters, if any;
9. The approximate date upon which the distribution will commence;
10. Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies or other investors under the laws of any state;
11. Whether, in the opinion of counsel, the security is exempt from specified taxes;
12. Whether the security is being offered through rights, and if so, certain information about the rights offering;
13. Any statement or legend required by state law or administrative authority;
14. For debt securities or preferred stock, the rating from a nationally recognized statistical rating organization and the name of the rating agency, if any.

#### *Required Disclosures*

1. If the registration statement (offering circular) has not yet become effective, a prescribed legend is mandated;
2. A statement whether the security is being offered in connection with a distribution by the issuer, or by a security holder, or both, and

whether the issue represents a new financing, or refunding, or both;

3. The name and address of a person or persons from whom a written prospectus meeting the requirements of the Securities Act (Part 563g in the case of securities issued by a savings association) may be obtained.

In addition, for “over-the-counter” debt offerings, i.e., where the security may be purchased at or through facilities of the savings association or an affiliate of the savings association, the following disclosures must be included in all communications in order to avoid their being considered materially misleading:

- a. A legend, in type at least as large as the largest type size used in the communication, that the security is not federally insured;
- b. A statement that the investment in such debt securities is subject to certain “investment considerations” or “risk factors” (whichever is appropriate), such as the absence of any indenture, trustee, or market for the securities, the fact that the securities are unsecured and subordinated to all other obligations of the institution, the probability of redemption if interest rates decline, etc.
- c. A statement that any “Cash Bonus” or “Cash Premium” offered as a sales incentive could result in certain tax consequences to the purchaser.
- d. A legend stating that potential investors should obtain and read a copy of the offering circular before making an investment in the securities.

#### *Disclosures Not in Compliance with Rule 134*

1. Statements designed to have or having the effect of implying that the security is an insured account (i.e., statements that the yield or interest rate of the security being offered is “higher than those offered on our other insured accounts”);

2. Statements comparing the security being offered to insured accounts available at the savings association, including attention-getting headlines;
3. Statements implying that the security is likely to remain outstanding until “maturity” (since if the savings association is able to borrow money more cheaply elsewhere, it will likely immediately redeem these high-interest rate debt securities).

### **Examination Objectives**

To determine if the savings association’s advertisements are accurate, not misleading, and in compliance with applicable rules.

To determine if the savings association’s advertising of debt securities is accurate, not misleading, and in compliance with applicable rules.

### **Examination Procedures**

1. Review copies of the savings association’s advertisements to determine if they are accurate and fairly represent its services, contracts, investments, and/or financial condition, and are not in any way misleading.
2. Determine if the savings association is properly displaying the official sign for SAIF-insured savings associations as required by FDIC regulations.
3. For debt securities:
  - a. Review copies of the savings association’s advertisements to determine that they clearly disclose the features of the secured debt instrument and comply with the advertising requirements.
  - b. Determine if the savings association sells its securities “over-the-counter”; if so, determine if all communications materials disclose that the security is not federally insured, and is subject to certain “investment considerations” or “risk factors.”

- c. If a “Cash-Bonus” or “Cash Premium” is offered as a sales incentive for purchasing debt securities, determine if all communications state that the receipt of such a bonus could result in certain tax consequences to the potential purchaser.
- d. Determine if all communications relating to the sale of secured debt include a legend stating that the potential investor should obtain and read a copy of the offering circular before making an investment in the security.
- e. Determine if any communication material contains information which may mislead the general public as to the nature of the debt security or makes comparison to an insured account offered at the savings association.
- f. Determine if any communication material makes a statement which implies that the security is likely to remain outstanding until “maturity.”

**References**

*Regulations*

12 CFR 563.27	Office of Thrift Supervision, Department of the Treasury, Operations Regulation, Advertising
12 CFR 563.76	Office of Thrift Supervision, Department of the Treasury, Offers and Sales of Securities
12 CFR 563g	Office of Thrift Supervision, Department of the Treasury, Securities Offerings Regulation
12 CFR 328	Federal Deposit Insurance Corporation, Advertisement of Membership Regulation

*Memoranda, Bulletins, Resolutions, and Opinions*

TB 23a	Sales of Securities
TB 31-2	Application of Securities Offering Rule to Materials for Offering of Debt

---

## CHAPTER: Compliance Laws and Regulations

### SECTION: Branch Closings

### Section 430

---

#### Introduction

This section contains the examination procedures used to assess compliance with the branch closing requirements of Section 42 of the Federal Deposit Insurance Act. These procedures are drawn from the joint policy statement on branch closings (Policy Statement) adopted on September 21, 1993, by the OTS, FRB, OCC and FDIC in order to provide appropriate guidance to insured depository institutions on this matter. The evaluation of an institution's policy for providing appropriate prior notice of branch closings as outlined in the Policy Statement was originally incorporated within the Community Reinvestment Act (CRA) examination procedures under Assessment Factor G, which focused on the institution's record of opening and closing offices and providing services at its offices.

The branch closing requirements were not included in either the new CRA examination procedures disseminated by the OTS in December 1995 or the new CRA regulation published on September 21, 1993. Policy considerations lead the OTS, FRB, OCC and FDIC to eliminate the branch closing notification provisions from the CRA examination process since these provisions did not appear to further the primary objective of the new regulation to evaluate institutions based on actual performance in helping to meet the credit needs of their communities. Accordingly, the branch closing notice provisions have been completely separated from the CRA regulation and are now reflected in the examination procedures of this section. These provisions require that institutions (1) adhere to certain notification procedures prior to closing any branch and (2) establish an internal policy reflecting such procedures.

#### Examination Objectives

To determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:

- Providing prior notification of any branch

closing to its appropriate Federal banking agency and customers of the branch.

- Establishing internal policies for branch closings.

#### Examination Procedures

1. Determine whether the institution has adopted a branch closing policy that ensures compliance with the Policy Statement regarding branch closings and Section 42 of the FDI Act.
2. Determine whether the institution's procedures for closing a branch have been followed since the latter of December 19, 1991 or the last examination in which compliance was assessed with the Policy Statement concerning branch closing notices and Section 42 of the FDI Act.
3. Determine whether the institution provided adequate notice of any branch closing to its appropriate Federal banking agency at least 90 days prior to the proposed closing of any branch closed on or after December 19, 1991.
4. Determine if the institution mailed an adequate notice to its customers at least 90 days prior to the proposed closing of any branch closed on or after December, 19, 1991.
5. Determine if the institution posted a notice to the branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing of any branch closed on or after December, 19, 1991.



Approved – FFIEC